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Handbook on Jury Use in the Federal District Courts

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Handbook on Jury Use in the Federal District Courts

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Federal Judicial Center

1989

This publication was produced in furtherance of the Center's statutory mission to develop and conduct programs of continuing education and training for personnel of the federal judicial system. The statements, conclusions, and points of view are those of the authors. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

Cite as J. George, D. Golash & R. Wheeler, Handbook on Jury Use in the Federal District Courts (Federal Judicial Center 1989).

FJC-M-89-1

Contents

Preface ix
Reference Materials xi
Acknowledgments xiii

1. Juries and Jury Management 1
Types of Juries 1
Overview of the Jury Selection Process 2
Goals of the Jury Selection Process 3
Regional and National Interest in Effective Juror Utilization 4
Circuit Judicial Councils 4
Judicial Conference of the United States 4
Administrative Office of the U.S. Courts 5
Federal Judicial Center 5
U.S. Congress 6

2. Developing a Jury Plan ..... \7
Mandatory Jury Plan Elements 7
Management of the Jury Selection Process 7
Source Lists 8
Procedures for Selecting Names from Source Lists 8
Plan Approval and Modification 9
District Plans vs. Divisional Plans 9
Jury Manuals 10

3. Creating the Master Jury Wheel 11
Identifying Source Lists 11
Voter Lists 12
Supplementary Sources 12

Filling the Master Jury Wheel 13
Determining the Number of Names to Draw 13
Randomly Selecting Names from the Source Lists 13
Public Draws and Public Notice 16
Emptying and Refilling the Master Jury Wheel 17

4. Creating the Qualified Jury Wheel 19
Determining the Number of Names Needed in the Qualified Wheel 19
Mailing Qualification Questionnaires 20
Number to Mail 20
How Often to Mail 21
Selecting Questionnaire Recipients at Random 21
Mailing Questionnaires 22
Analyzing Returned Questionnaires 22
Processing Questionnaires 22
Disqualifying, Exempting, and Excusing Jurors 24
Placing the Names of Qualified Persons in the Qualified Wheel 29
Emptying and Refilling the Qualified Wheel 29

5. Selecting and Summoning Prospective Jurors 31
Determining the Term of Service 31
Required Maximum Service Terms; Local Variations 32
Use of On-Call Jurors 33
Selecting and Summoning Jurors 35
Using Random Selection Procedures 35
Establishing the Number of Jurors to Summon 35
Narrowing the Gap Between Predicted and Actual Trial Starts 36
Determining How Often to Draw Names for Summonses 37
Determining Summons Contents; Related Materials 37
Serving the Summonses 38
Establishing Hardship Excuse Policies 39
Granting Excuses 39

Processing Excuses 40
Controlling Excuse Requests 40
Granting Deferrals 40
Establishing Policies for Exclusions 40

6. Impaneling the Jury 43
Assembling Jurors for the Voir Dire 43
Jury Size and Alternates 44
Panel Size Needed 45
Calendar Coordination 45
Conducting the Voir Dire 46
Single Voir Dire 46
Multiple Voir Dire 49
Exercising Challenges 50
Challenges for Cause 50
Peremptory Challenges 51
Use of Juror Lists and Questionnaire Data 52
Methods of Exercising Challenges 52
Administering the Final Oath 54
Impaneling Juries in High-Publicity Cases 54
Prescreening Questionnaires 55
Reviewing Data on Prior Trials 55
Staggering Prospective Jurors' Reporting In 55
Using a Separate Panel of Prospective Jurors 56

7. Implementing Policies for Juror Comfort, Education, and Protection 57
Preliminary Information 57
Transportation and Parking 58
Transportation 58
Parking 59
Check-In Procedures 59
Identifying No-Shows 60
Handling Hardship Excuses 60
Juror Facilities and Amenities 61
Juror Identification 61

Jury Assembly Room or Lounge 61
Other Amenities 62
Juror Safety 63
Orientation 63
Basic Orientation Material 63
Films and Videos 64
Scheduling the Orientation 64
Deliberation Rooms 65
End of Service Forms and Procedures 65
Certificate of Appreciation 65
Tax Aspects of Jury Service 66
Exit Questionnaire 66

8. Administering Grand Juries 67
Types of Grand Juries and Terms of Service 67
Regular Grand Juries 68
Special Grand Juries 68
Summoning Grand Jurors 68
Impanelment Orders 68
Sources and Selection of Names 69
Number of Summonses to Issue 70
Supplemental Questionnaire Information 70
Informational Materials 71
Selection of the Grand Jury 71
Chief Judge's Role 72
Appointment of a Foreperson and a Deputy 72
Grand Jury Charge 72
Orientation 73
Grand Jury Rooms 74
Utilization 74
Grand Jury Coordinators 75
U.S. Attorney Contact Person 75
Procedures for Communicating with the Grand Jury 75
Predicting Grand Jury Use 76
Establishing and Monitoring Grand Jury Use 76

9. Maintaining Jury Selection Records and Information 79
Jury Selection Records 79
What to Retain 80
Retention Period 80
Public Inspection 81
Disposal 81
Data for the Administrative Office 81
AO Form JS-11 81
AO Forms JS-11G and JS-11GS 82
AO Form JS-12 82
Information for the Court's Internal Use 83
Data Analysis 83
Jury Exit Questionnaire 84

Glossary 85

Preface

Most people in the United States accept without question the idea of a constitutional right to a jury trial. They learn about juries in grammar school, read about them in newspapers, and watch them on TV shows. They know that the court may summon people for jury duty at any time. Few, however, realize the amount of work it takes to select and impanel a jury, or how this work is accomplished by federal judges, lawyers, and federal court employees who administer juries. The main purpose of this handbook is to explain the basic concepts of administering federal juries to these employees, who are known as "jury staff." The handbook describes administrative procedures that jury staff should be familiar with, statutory requirements, and Judicial Conference policies. It describes general jury practices used in most federal courts. The handbook does not detail all the numerous variations in practice that courts have developed for special needs. Jury staff should be guided by those responsible for jury administration in their particular courts.

The handbook also explains the jury staff's role and the roles of judges and clerks of court in the administration of juries. For example, establishing and amending policies on jury administration is the province of judges. In most courts, clerks of court manage the jury selection system, which includes delegating many administrative duties to jury staff. The distinctions among the roles are not always obvious or clear-cut, especially given the trend toward greater coordination among judges, clerks, and jury staff. Insofar as possible, however, the handbook points out the jury staff's role in each part of the jury selection process.

Finally, the handbook describes techniques for accommodating the legitimate needs of citizens involved in the jury selection process, techniques that will also often result in cost savings to the government.

Reference Materials

Jury staff may want to look at information that helps clarify a point or points made in this handbook. The Glossary, at the end of the handbook, is a logical place to start. It defines words and phrases as they are used in jury administration.

Jury staff may also want to look at the major laws and court rules that govern jury administration and are discussed throughout the handbook. The most frequently mentioned law is the Jury Selection and Service Act of 1968. Congress has amended it several times, and it can be found, as amended, at §§ 1861–1878 of title 28 of the United States Code. The handbook refers to this law as "the Act" and, if applicable, cites the appropriate section at the end of a sentence, such as 28 U.S.C. § 1861. The handbook also refers to sections of title 18 of the United States Code that pertain to grand juries—including §§ 3321–3328 and §§ 3331–3334.

The major court rules to which the handbook refers are the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Federal Rules of Criminal Procedure (Fed. R. Crim. P.), which have the same effect as laws passed by Congress. The civil rules govern the procedures that the court and parties must follow in civil cases; the criminal rules govern the procedures in criminal cases. A court may also adopt local rules that are not inconsistent with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

Acknowledgments

The Federal Judicial Center's Division of Special Educational Services prepared this handbook, with considerable help from the Jury Committee of the United States District Court Clerks. We would like to thank employees of district court clerks' offices, the Administrative Office of the U.S. Courts, and the Federal Judicial Center, who provided materials, comments, and suggestions. We would like to give special thanks to David Williams at the Administrative Office and to a group of four clerks who reviewed the handbook. The clerks are Loretta Whyte (E.D. La.), chair of the Clerks' Jury Committee, 1984–1986, Joseph Skupniewitz (W.D. Wis.), Thomas Caver (M.D. Ala.), and Nancy Doherty (N.D. Tex.).

1 Juries and Jury Management

Juries play a unique and important role in the U.S. judicial process. In criminal cases, they determine a person's guilt or innocence. In civil cases, they determine whether a person has the right to receive compensation for a loss that another person allegedly wrongfully caused.

Juries are also known as "triers of fact." This term refers to the division of labor at a trial, where the jury determines the facts and the judge determines the law.

From time to time, debate surfaces about whether juries should exist at all. Proponents of the jury system argue that juries are the conscience of the community and the public's line of defense when the government acts oppressively. Opponents claim that juries are ineffective, expensive, and unsuited for their task, at least in some kinds of cases.

Regardless of the debate, it is clear that the right to a trial by one's peers is deeply ingrained in the American system of justice. The Constitution provides that the "trial of all crimes, except in cases of impeachment, shall be by jury."[1] The Constitution's Sixth and Seventh Amendments provide specific protections for juries in civil and criminal cases. Moreover, Congress has enacted several laws to ensure the availability of juries in federal cases.

Types of Juries

Federal courts use two types of juries: trial juries and grand juries. Trial juries generally have from 6 to 12 members. A trial jury, also referred to as a "petit jury," determines the facts in dispute at a trial by

1. U.S. Const. art. III, § 2, cl. 3.

listening to the evidence that each party presents. Jury members then meet in secret and reach a verdict.

Grand juries are less commonly known than petit juries and play a different role in the judicial process. Instead of spending part of their time at trials, grand juries always meet in secret. A grand jury's job is to determine whether there is "probable cause" to charge a person with a crime. If so, it issues a formal charge, referred to as an "indictment."[2] It is called a grand jury because it has from 16 to 23 members, a greater number than a petit jury. Grand juries base their decisions on evidence that the U.S. Attorney's Office presents.[3]

Overview of the Jury Selection Process

A court must have citizens available to serve as grand or petit jurors when a case requires a jury. Therefore, the court must identify a small number of citizens from the total population in its district and ensure that they are eligible to serve in the case. As this handbook will discuss in detail, the jury selection process involves five basic steps (not all of which are taken each time the court selects a jury). These steps are as follows:

1. **Developing a jury plan.** According to the Jury Selection and Service Act of 1968, each court must "devise and place into operation" a written plan specifying how it will select jurors. 28 U.S.C. § 1863(a). Developing the plan is primarily the judges' responsibility.
2. **Creating a "master jury wheel."** A master jury wheel is a randomly drawn list or computer file of names that a court uses in selecting jurors. The sources of these names, often voter lists, are referred to as "source lists."
3. **Creating a "qualified jury wheel" from which the court can randomly select persons to summon for jury service.** A refined version of the master jury wheel, the qualified jury wheel makes jury selection more efficient by eliminating

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2. This handbook also discusses special grand juries, which meet to study the overall pattern of criminal activity in a district; see page 68.

3. A U.S. Attorney is an attorney who represents the federal government in criminal cases and in some civil cases. A U.S. Attorney is appointed by the President for a four-year term. *See* 28 U.S.C. § 541.

from the master wheel persons who are not required to serve as jurors or are not qualified to serve.

4. **Selecting and summoning prospective jurors from the qualified wheel.** This step includes granting hardship excuses for people who are temporarily unable to serve and excluding jurors who are unable to render impartial jury service or whose presence as a juror would be disruptive.
5. **Impaneling a jury.** The main component of this step is the "voir dire" examination, during which judges and lawyers may have prospective jurors answer questions about their attitudes and background. Its purpose is to elicit any information that demonstrates that a prospective juror could not or would not serve without bias or prejudice in a particular case.

In addition to these basic steps, most courts also implement policies regarding juror comfort, education, and protection; have special policies for grand jury selection; and maintain information and records regarding jury selection.

Goals of the Jury Selection Process

A court's jury selection process must do more than ensure that a specified number of persons are sitting in the jury box when a trial begins. It must also meet the policy goals of the Jury Selection and Service Act, which governs jury use in federal courts and incorporates several decisions of the U.S. Supreme Court. These goals, best captured by quoting the statutory language, are the following:

- "all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes" (28 U.S.C. § 1861);
- "all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose" (28 U.S.C. § 1861); and
- "no citizen shall be excluded from service as a grand or petit juror in the district courts of the United States . . . on account of race, color, religion, sex, national origin, or economic status" (28 U.S.C. § 1862).

The federal court system encourages efficient juror use, which reflects two secondary but also very important goals:

- ensuring that an adequate number of citizens are at the court, ready to serve as jurors, when a trial begins; and
- ensuring that the citizens summoned to the courthouse have a good chance of being selected for jury service.

If a court meets these two goals, trials will be more likely to start on time, citizens will be more likely to feel that jury service is useful, and taxpayers' money will be spent more wisely.

Regional and National Interest in Effective Juror Utilization

Each district court has primary responsibility for ensuring that its system of selecting juries is efficient. However, the courts receive direction, assistance, and advice from agencies and governing bodies at both the regional and national levels.

Circuit Judicial Councils

Circuit judicial councils, composed of circuit court and district court judges, have a statutory mandate to ensure "the effective and expeditious administration of justice" within their respective circuits. 28 U.S.C. § 332. Congress established them in 1939 as part of its goal to vest as much administrative authority as possible in regional bodies, which could respond to problems quickly and effectively. The councils have broad supervisory authority, and must also review plans and policies that the district courts propose, including each court's jury plan and amendments to it (discussed in chapter 2).

Judicial Conference of the United States

At the national level, the Judicial Conference of the United States is the principal policy-making body of the federal judiciary. Its Committee on Judicial Improvements, consisting of judges from around the

country, studies jury operations and recommends changes when necessary.[4]

Congress has authorized the Judicial Conference to adopt rules and regulations for the operation of each court's statutorily required jury plans. The Judicial Conference also makes general recommendations on other aspects of jury selection. For example, in 1984, it adopted a goal, proposed by the former jury committee, that "all district courts limit the percentage of jurors not selected, serving, or challenged on voir dire or orientation day to 30 percent."[5] (See chapter 6 for a discussion of voir dire.)

Chaired by the Chief Justice of the United States, the Judicial Conference meets twice a year and includes the chief judge from each appellate court, one district judge from each regional circuit, and the chief judge of the Court of International Trade. 28 U.S.C. § 331.

Administrative Office of the U.S. Courts

The Administrative Office of the U.S. Courts, created in 1939, is the staff arm of the Judicial Conference and implements its policies. 28 U.S.C. §§ 601–611. The Administrative Office has a general interest in jury use, and several of its divisions work on issues directly related to the subject.

The Administrative Office provides many of the standard forms that district courts use in administering their jury operations. The Act also requires the Administrative Office to collect statistical data on jury use from the district courts and publish them periodically.

Federal Judicial Center

In 1967, Congress established the Federal Judicial Center to "further the development and adoption of improved judicial administration" in the federal courts. 28 U.S.C. §§ 620–628. The Center

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4. In 1987, this committee absorbed the work of a prior Judicial Conference committee, the Committee on the Operation of the Jury System, as part of a general restructuring.

5. *Report of the Proceedings of the Judicial Conference of the United States,* March 1984, pp. 34–35. The Conference declined, however, to recommend that district courts use a specific formula for calling jurors for civil and criminal trials. *Report of the Proceedings of the Judicial Conference of the United States,* September 1984, p. 88.

occasionally performs research on alternative jury administration procedures for Judicial Conference committees. It also includes juror utilization techniques in its educational seminars for judges and supporting personnel.

U.S. Congress

Congress influences federal court jury selection in several ways. It can set guidelines that the courts must follow in selecting citizens for jury duty, as in the Jury Selection and Service Act of 1968. The funds courts use to operate the jury system come from appropriations statutes passed by Congress. Moreover, members of Congress often ask judges and court administrative officials about effective juror utilization when Congress is considering the courts' appropriations bills. Members of Congress sometimes ask the General Accounting Office, Congress's investigative agency, to examine federal court jury utilization.

2 Developing a Jury Plan

As mentioned in chapter 1, the Jury Selection and Service Act requires each district court to "devise and place into operation" a written plan specifying how it will select jurors. 28 U.S.C. § 1863(a). The judicial council is responsible for ensuring that the plan, known as a "jury plan," meets the Act's requirements and policy goals, including those for selecting jurors at random and without regard to race, color, religion, sex, national origin, or economic status.

Jury staff should be thoroughly familiar with a court's jury plan for at least two reasons. First, jury staff must follow the plan when carrying out their day-to-day responsibilities. The plan is the key to a court's jury selection process. Failure to comply with it could result in a dismissal or reversal of a civil or criminal case. Second, jury staff are often in the best position to recommend modifications if conditions change or a certain provision in the plan does not work well. These recommendations, which should be made to the clerk, can benefit everyone involved in the jury selection process, including jury staff, judges, jurors, and litigants.

Mandatory Jury Plan Elements

A court has latitude in deciding how comprehensive its jury plan should be, but every plan must contain at least eight elements. These elements fall into three general categories: management of the jury selection process, source lists, and procedures for selecting names from the source lists.

Management of the Jury Selection Process

According to the Act, a jury plan must specify who will manage the process of selecting jurors. 28 U.S.C. § 1863(b)(1). This manager can be either the clerk of court or a jury commission. A jury commission consists of the clerk of court and a citizen the court appoints. Because

most courts do not use jury commissions, this handbook uses "clerk" to refer to clerks of court and jury commissions.[6]

A jury plan should also specify which judge of the district court will supervise the clerk in jury duties—either the chief judge or another judge, often referred to as the "jury judge."

Source Lists

A jury plan must specify the lists of names from which the court will select citizens to serve as jurors. 28 U.S.C. § 1863(b)(2). These lists, known as "source lists," are discussed in chapter 3.

Procedures for Selecting Names from Source Lists

A jury plan must specify the procedures a court will use to select names at random from the source lists (28 U.S.C. § 1863(b)(3), discussed in chapters 3 and 4). These procedures specify the following:

- the number of names a court must place in its master jury wheel (28 U.S.C. § 1863(b)(4), discussed in chapter 3);
- the groups of persons or occupational classes the court must excuse from jury service if a member requests an excuse (28 U.S.C. § 1863(b)(5), discussed in chapter 4);
- the groups of persons or occupational classes who cannot serve because they are exempt (28 U.S.C. § 1863(b)(6), discussed in chapter 4);
- the time when the names drawn from the qualified jury wheel shall be disclosed to the parties and the public (28 U.S.C. § 1863(b)(7), discussed in chapters 6 and 9); and
- how the clerk must assign persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels (28 U.S.C. § 1863(b)(8), discussed in chapters 5, 6, and 8).

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6. The Director of the Administrative Office, in a memorandum dated September 3, 1985, to the chief judges and clerks of the district courts, stated that "[t]he Judicial Conference Committee on the Operation of the Jury System requested this office to forward two recommendations regarding courts' management of the jury system. The second recommendation calls for courts to eliminate or phase out their use of jury commissioners."

Plan Approval and Modification

A court does not have the final word on its jury plan. After devising the plan, a court must submit it to a review panel. The panel, composed of members of the circuit's judicial council and the district's chief judge,[7] must approve the plan and any subsequent modifications. If it does not, the district court must present an alternative plan that corrects the original plan's defect or defects.[8]

Once approved, the jury plan and modifications to it are binding. Therefore, jury staff should review the plan periodically to ensure that the court is following the procedures it prescribes. As mentioned earlier, changes in conditions may require modifications to the plan, which jury staff should propose to the clerk.

District Plans vs. Divisional Plans

Congress has divided the country into geographic regions for the purpose of administering justice. These regions are called districts, for example, the Middle District of Alabama. In addition, Congress has divided some judicial districts into divisions, such as the Northern, Southern, and Eastern Divisions of the Middle District of Alabama.[9] A court may select juries from its entire district or from one division or a combination of divisions in its district. If it chooses to select juries from a division or combination of divisions, it may adopt more than one jury plan.

Courts have developed jury plans based on at least four types of district or division arrangements:

1. Some districts have statutory divisions and hold court in only one place in each division. In these districts, separate jury plans may be adopted for each division.
2. Some districts have statutory divisions and hold court in more than one place in some or all of these divisions. In these dis-

7. The chief judge may designate another district judge to serve on the panel in his or her place.

8. See 28 U.S.C. § 1863(a), (c) for a detailed explanation of the approval process, the effective date of approved modifications, and requirements for filing modifications.

9. See 28 U.S.C. §§ 81–131 for a complete listing of the territorial composition of districts and divisions by counties.

tricts, each place of holding court may be considered a "jury division" and may maintain a separate jury plan.

3. Some districts have no statutory divisions and only one place of holding court. These districts have only one jury plan.
4. Some districts have no statutory divisions, but more than one place of holding court. In these districts, the Act permits courts to create the equivalent of "divisions" for jury selection purposes. For example, if a district with no statutory divisions has three places of holding court, the jury plan may divide the district into three "administrative divisions."

Regardless of how a court divides its district, its jury plan must include every county, parish, or similar political subdivision in the district. The court must do so to meet the Act's policy requirement that a court give every person in a district the opportunity to be considered for jury service.

However, the court's plan should not require separate jury selection procedures in divisions in which it rarely or never holds jury trials, because this would effectively eliminate people in these divisions from jury service. To include these people, the court should use names from these divisions in jury selection for other divisions in which it does hold jury trials.

Jury Manuals

Because jury plans are binding and take time to amend, many courts limit the scope of such plans to information that the Act specifically requires. These courts use a separate jury operations manual to describe procedural details, such as following up on unreturned or undeliverable juror qualification questionnaires, as discussed in chapter 4. This approach gives the courts greater administrative flexibility. If changes become necessary, the courts can update their manuals without the need for approval by their judicial council.

3 Creating the Master Jury Wheel

After it develops a jury plan, a court must create a master jury wheel from its source lists, according to the jury plan's specifications.[10] As mentioned in chapter 1, a master jury wheel is a randomly drawn list or computer file of names that a court uses in selecting jurors. The term "jury wheel" originated in the days when many courts called people for jury service by placing names in a wheel or circular drum and drawing from it. Nowadays, almost all jury wheels are computer files; in a few courts, they are written lists.

To create a master jury wheel, a court must

- identify the sources of names, "source lists," it will use to select prospective jurors; and
- "fill" the master jury wheel with names it selects at random from the source lists.

In addition, a court must update the master jury wheel periodically, a process know as "emptying and refilling."

Identifying Source Lists

Section 1863(b)(2) of the Jury Selection and Service Act requires a jury plan to identify the sources of names (i.e., "source lists") that the court will use to create its master jury wheel. The Act requires that offi-

10. Chapters 3 and 4 outline the elements in selecting the master jury wheel from source lists and creating the qualified jury wheel. These chapters cannot, however, adequately cover some of the subtle nuances of this phase of jury administration. *Qualifying, Summoning, and Excusing Jurors in the United States District Courts,* a 1986 Administrative Office booklet by its Special Assistant for Jury System and Speedy Trial Matters, provides helpful additional information. It is available from the Administrative Office's Division of Court Administration.

cials in control of these lists allow a court to inspect and copy them. 28 U.S.C. § 1863(d).

Voter Lists

Under the Act, the principal source of names a court must use to create its master jury wheel is voter lists. The voter lists that a court uses, and must identify in its jury plan, can be either voter registration lists or lists of actual voters. 28 U.S.C. § 1863(b)(2). Most courts find the voter registration lists adequate; however, jury staff must use whichever lists the jury plan specifies.

Supplementary Sources

If voter lists are not likely to yield jurors from a fair cross section of the community, a court's jury plan must specify other sources of names. 28 U.S.C. § 1863(b)(2). For example, a court might compare its jurors with Bureau of Census data and find that voter lists are not producing jurors from a valid cross section of the community. Only a few districts—all with large minority populations—currently supplement their lists. The two most common supplementary sources are lists of persons holding a driver's license and state jury selection lists.

Driver's license records. Driver's license records are computerized and include persons who are not registered voters but are eligible for jury service. A problem with driver's license lists, however, is that they include a greater proportion of ineligible persons than voter lists do, such as those who are not at least 18 years old, those who are not citizens of the United States, or those who have criminal records. Thus, a court that uses driver's license lists will probably send juror qualification questionnaires to persons who are ineligible for jury service. These lists also may not indicate county of residence, which could create a problem in meeting the Act's requirement of proportional representation of county residents (discussed in the next section).

State jury selection lists. State jury selection lists that are purged of duplicates are also desirable supplementary sources. These lists include persons registered to vote and those holding a driver's license.

Filling the Master Jury Wheel

To fill its master jury wheel, a court must determine how many names to draw from the source lists and then actually draw them. It must draw the names according to its policies, and laws and regulations on random selection, public draws, and public notice. At this point, whether a court uses computers will determine the specific procedures it is most likely to, and sometimes must, follow.

Determining the Number of Names to Draw

A jury plan must specify the minimum number of names the court must draw from the source lists to place in the master wheel. 28 U.S.C. § 1863(b)(4). The number must be at least 0.5 percent of all the names on the source lists, unless the court finds that number "cumbersome and unnecessary." 28 U.S.C. § 1863(b)(4). If so, the court may specify a lower number, but not less than 1,000. The court may also order jury staff to place additional names in the master jury wheel when necessary.

Some jury plans specify that the court will place a minimum of 0.5 percent of the names in the master wheel. Specifying a minimum of 0.5 percent allows the court to use a higher percentage (e.g., 1 percent) when necessary, and then later reduce it without having to amend the plan.

The master jury wheel must "substantially proportionally" represent persons in each of a district or division's "counties, parishes, or similar political subdivisions." 28 U.S.C. § 1863(b)(3)). This requirement ensures that the court meets the Act's policy goal of selecting juries at random from a fair cross section of the community. If the master wheel is challenged on these grounds, the court must make information on jurors' residences available for analysis. 28 U.S.C. § 1867.

Randomly Selecting Names from the Source Lists

After determining the number of names it will place in the master jury wheel, a court must select those names at random from the source lists. 28 U.S.C. § 1863(b)(3)). The selected names then make up the master jury wheel. Some courts issue an order directing the clerk to draw the names; in others, the plan provides direction on this point.

There are two methods of random selection: (1) a blind draw and (2) the use of quotient and starting numbers. With either method, the actual selection of names is usually done by computer, because a court usually receives the source lists on computer tapes or disks. However, a court can select names by hand if the source lists are written or typed.

A court can also select names both by computer and by hand. A district in which some counties have automated source lists and others do not might use this approach. In such a district, the computer would draw names from the automated lists while jury staff randomly selected other names by hand from the typed lists. Then, the computer would assemble both lists into a master list.

Blind draws. A blind draw, when done manually, means placing each name from the source list on a separate card, putting the cards in a drum, and drawing them blindly until the number needed for the master wheel is reached. Some courts use computer programs that simulate a blind draw to select names from the master jury wheel.

Quotient and starting numbers. Most courts, with the help of computers, use "quotient numbers" and "starting numbers" to meet the Act's goal of random selection of names for the master wheel from the source lists. A court that uses quotient and starting numbers to select names for its master jury wheel must first find the quotient number. The quotient number is also known as the "interval number" because it indicates the interval at which a court should select names from the source lists. It is determined by dividing the total number of names on the source lists by the number of names to be drawn.

For example, assume a court had 500,000 names on its source lists and a goal of selecting 1,000 names for its master jury wheel. It would divide 500,000 by 1,000, obtaining a quotient number of 500. Then, the court would place the name of every 500th person on the source lists in the master wheel. If the court began selecting names with the first juror on the source lists, that person would be Prospective Juror 1; the 501st person on the lists would be Prospective Juror 2; and so on, through the 499,501st person on the lists, who would be Prospective Juror 1,000.

A court should not automatically start its selection with the first name on the list, however. If it does, the names in the last interval (here, the 499 names from 499,502 to 500,000) will have no chance of being chosen. Thus, a court must find a starting number, the number at which it should start selecting names on the list. The number must be

between one and the quotient number to ensure that every name in every interval has an equal chance of being chosen.

A court must choose the starting number at random. In our example, the clerk could program a computer (or have a computer center program a computer) to randomly choose a starting number from 1 to 500. In courts that are not automated, the clerk could place cards, numbered consecutively from 1 to 500, in a box and draw one at random.

Random selection provides protection against ensuring that a particular person is selected (or not selected). This could happen if the staff chose a starting number calculated to land on (or avoid) an interval with the desired name. Sections 1864(a) and 1866(a) of the Act and the 1979 Judicial Conference implementing resolution[11] provide another protection by requiring a court to select the starting number in public. The public-draw requirement preserves the integrity of the process.

A complication arises if the computation of the quotient number produces a "remainder." If there is a remainder, names in certain intervals have no chance of being chosen.

Assume, in our example, that the source lists have 500,200 names, from which the court wishes to draw 1,000 names for the master wheel. The quotient number would still be 500, but 500,200 divided by 1,000 leaves a remainder of 200. Regardless of the starting number, the selection process would produce 1,000 names before reaching the last 200 names.

Courts have developed a variety of techniques for dealing with this remainder problem. One is to eliminate the remainder by adjusting the number of names selected. Another is to issue a court order that gives jury staff leeway in choosing jurors to avoid a remainder. For example, a court order might refer to the selection of "at least 1,000 names," allowing jury staff to choose a few more if necessary to ensure that all persons on the list have an equal opportunity to be selected.

A third way for a court to deal with a remainder problem is to choose as the starting number the sum of the remainder and the quotient number, rather than selecting the starting number from a range of numbers from one to the quotient number. In our example, a court

11. *Report of the Proceedings of the Judicial Conference of the United States*, March 1979, pp. 41–42.

would add 200 (the remainder) and 500 (the quotient number) to arrive at a starting number of 700.

Many courts periodically add names to the master wheel. This approach continually changes the size of the lists and the relative positions of individual names on them. The continual change, in turn, minimizes the chances that any one segment of the list will be permanently excluded from the selection process.

Courts that are not automated can select jurors manually using quotient and starting numbers by counting down the source list from the starting number, using the quotient number interval, or by applying a measuring device, such as a ruler, to the list. If a court uses a ruler, it should mark the ruler at intervals that an actual name count would produce.

Public Draws and Public Notice

A court that uses computers must select names from the source lists not only at random (28 U.S.C. § 1863(b)(3)) but also in public. The "public draw" requirement stems from a combination of the Act and Judicial Conference regulations. Sections 1864(a) and 1866(a) of the Act require random and public selection of names from the master jury wheel and from the qualified jury wheel. Implementing Judicial Conference regulations have applied the public-draw requirement to master wheel selection for courts that use computers to select names "from the original source lists."[12]

The public-draw requirement does not give the public the right to observe the actual computer operations. It applies only to the selection of starting and quotient numbers.

The Judicial Conference also requires courts that use computers to

- provide the computer operator with written instructions describing the operations to be performed by the computer center; and
- obtain an affidavit from the agency providing the computer service stating that it has fully complied with the procedures set forth by the court.[13]

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12. *Report of the Proceedings of the Judicial Conference of the United States*, March 1979, p. 42.

13. *Report of the Proceedings of the Judicial Conference of the United States*, March 1979, pp. 41–42.

A court's jury plan may refer to the instructions given to the computer operator, which the court must make available for public inspection.

A court must also post notices of a drawing on a bulletin board (or the equivalent) at the court in which jurors it selects in the drawing will serve.[14] The posting must occur a reasonable amount of time prior to the drawing. At its discretion, a court may also use other methods of communication.

Emptying and Refilling the Master Jury Wheel

A court must "empty" and "refill" its master jury wheel at least once every four years. 28 U.S.C. § 1863(b)(4). Emptying and refilling means discontinuing the use of one wheel and drawing another at random from source lists. It helps keep the master wheel current and ensures that all the residents in a district have the opportunity to be considered for service.

Most courts empty and refill their master wheels when their source lists are updated, typically according to the four-year presidential election cycle. Others prefer to empty and refill them every two years. This method enables courts to include people who have recently turned 18 and people who have recently moved into the district, and it provides more current demographic cross-sectioning. As discussed in chapter 9, a court must retain its discarded master wheel for at least four years.

14. *Report of the Proceedings of the Judicial Conference of the United States,* March 1979, pp. 41–42.

4 Creating the Qualified Jury Wheel

The third step in the jury selection process is creating a qualified jury wheel. A qualified jury wheel is a list or computer file of names from which a court can randomly select persons to summon for jury service. Its purpose is to make the jury selection process more efficient by eliminating from the master jury wheel persons who are not required to serve as jurors or are not qualified to serve.

To create a qualified jury wheel, a court must

- determine how many names it needs in the qualified jury wheel;
- mail "qualification questionnaires" to a randomly selected number of persons whose names are in the master wheel;
- analyze the returned questionnaires to determine which persons are qualified for jury service; and
- place the names of qualified persons in the qualified wheel.

As with the master jury wheel, the court must also periodically update the qualified jury wheel by "emptying and refilling" it.

Determining the Number of Names Needed in the Qualified Wheel

Jury staff must determine how many names are needed in the qualified jury wheel to meet the court's demand for jurors during a specified period of time. The Jury Selection and Service Act does not require a specific number, but a court's jury plan may indicate one. However, even if the plan does indicate a specific number, it may be unwise for jury staff to rely on it, especially if a court adopted its plan some time ago. A court's needs may vary over time as a result of changes in the number of judgeships, in the size and mix of the caseload, and in the makeup of the population in the district. If neces-

sary, jury staff can recommend that a court change the minimum number of names that its jury plan requires.

Mailing Qualification Questionnaires

Once jury staff have determined how many names a court needs for its qualified jury wheel, they must mail qualification questionnaires to people whose names are in the master jury wheel. The questionnaires elicit information that helps a court determine whether a person qualifies for jury service.

The Act states that each court should use a standard qualification questionnaire, provided by the Administrative Office of the U.S. Courts. 28 U.S.C. § 1869(h). The Administrative Office offers three different forms: AO Form 178D Option A (with standard excuse categories preprinted) and AO Form 178D Option B (with only two excuse categories preprinted) for automated courts, and AO Form 178 for nonautomated courts.[15]

The information the questionnaire elicits includes a person's name, address, age, race, occupation, education, length of residence within the judicial district, prior jury service, citizenship, and reasons for excuses or exemptions from jury service. A district court can use the form to elicit other information as well if doing so is in the "interests of the sound administration of justice" and "not inconsistent" with the Act. 28 U.S.C. § 1869(h).

Number to Mail

Jury staff must determine how many questionnaires will yield the number of jurors that a court needs for its qualified jury wheel. In other words, after a court has eliminated persons whom the returned questionnaires have shown to be ineligible for jury service, it must have enough names left from which to summon jurors.

Some courts use "yield records" to help them determine the number of questionnaires to mail. Yield records show, from a specific number of questionnaires a court mails

- how many were unreturned or undeliverable; and

15. See pages 27–28 for a discussion of these excuse categories.

- how many persons who returned questionnaires were unqualified for, exempted from, or excused from jury service (discussed in the next section).

Jury staff can use this information to determine the number of jurors that another mailing might yield, making allowances for differences in judges, types of trials, and numbers of trials expected. This approach saves the time and expense of mailing and screening more questionnaires than are necessary to produce an adequate qualified jury wheel.

How Often to Mail

The Act does not state how often a court should mail questionnaires. Most courts prefer to mail a small number at frequent intervals, such as every two or three months. These frequent mailings have at least three advantages:

1. They allow a court to change the number of questionnaires it mails in response to changing needs during the year.
2. They prevent a deluge of responses in a brief period, allowing jury staff to arrange their work to accommodate the flow of questionnaires.
3. The information that a person provided on the returned qualification questionnaire is likely to be current when the court summons that person. A person who returned a questionnaire a year ago may have moved or become ineligible for other reasons.

Despite these advantages, small courts that need a relatively small number of jurors often find it easier to mail questionnaires once a year or once every two years.

Selecting Questionnaire Recipients at Random

A court must select at random the names of persons who receive qualification questionnaires. 28 U.S.C. § 1864(a). It must also meet public-draw and public-notice requirements. (See pages 13–17 for a discussion of random and public selection.)

Mailing Questionnaires

If the court uses a computer center to draw names from the master wheel, the center can address these forms or give them to the court to mail. The center will also give the court a list of the names it draws, if the court requires a list pursuant to the Act. 28 U.S.C. § 1864(a).[16]

Analyzing Returned Questionnaires

Analyzing the questionnaires that prospective jurors return is a two-step process. First, jury staff must process the returned questionnaires to ensure that prospective jurors have completed them properly. Second, the judge, customarily aided by jury staff, must determine whether individual prospective jurors are "unqualified for, exempt, or to be excused from jury service." 28 U.S.C. § 1865(a). If so, the court will not place their names in the qualified wheel.

Processing Questionnaires

Persons who receive qualification questionnaires must return them within 10 days. 28 U.S.C. § 1864(a). The questionnaires will fall into the following categories:

- returned and properly completed;
- returned undelivered;
- unreturned but presumably delivered; and
- returned but improperly completed.

Returned and properly completed. The returned and properly completed questionnaires are ready for the second step of analysis (determining whether individual persons are unqualified for, exempt from, or to be excused from jury service). However, jury staff and clerks may need to take further action on questionnaires that fall into the other categories.

Returned undelivered. The Postal Service will return a questionnaire if a person moved and did not leave a forwarding address, or if a person moved at least 18 months before receiving the questionnaire (the Postal Service stops forwarding mail after 18 months). Most courts do not follow up on these undeliverable questionnaires.

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16. According to 28 U.S.C. § 1864(a), this list shall not be disclosed to any person except pursuant to the district court plan or to 28 U.S.C. §§ 1867, 1968.

If a person has died, a friend or relative might return the questionnaire with "deceased" written on it. Except when such a response looks suspicious, most courts do not follow up on such questionnaires.

Unreturned but presumably delivered. According to the Act, the clerk may require a person who fails to return a questionnaire to complete one in court. 28 U.S.C. § 1864(a).

Because of the potential costs, few clerks require everyone who fails to return a questionnaire to complete one in court. Most courts, however, have a follow-up system to identify unreturned questionnaires. Most also take follow-up action, such as mailing the person another copy of the questionnaire, along with a letter reminding the person of his or her legal obligation to fill it out.

A court that does not follow up on unreturned questionnaires risks two consequences: people evading jury service and non-random selection of juries. Although there is no particular reason to believe that unwilling jurors fit disproportionately into a particular racial, religious, or other demographic category, such patterns could occur in some parts of the country

Returned but improperly completed. The Act recognizes that a person may return a questionnaire with an "omission, ambiguity, or error." 28 U.S.C. § 1864(a). A clerk will return improperly completed questionnaires with form letters that have boxes indicating questions, or parts of questions, that a prospective juror needs to complete. The clerk should check the appropriate boxes for each person and instruct him or her to return the completed questionnaire within 10 days. The clerk may require a person who fails to return a corrected questionnaire to make the corrections in court.

Despite the statutory authority to return improperly completed questionnaires and require people to correct them in court, most clerks only follow up on improperly completed questionnaires that are likely to result in qualified jurors. This approach saves staff time and the prospective jurors' time, and it decreases the possibility of having to pay juror fees and transportation costs for people who will not eventually serve as jurors. For example, if a person indicates that he or she cannot speak English, or cannot read and write it sufficiently to fill out the form, a clerk would not require the person to attest to this in court.

In addition, the clerk does not need to follow up on some items on the questionnaire that are not completed. For example, assume that a

person did not answer Question 1, on citizenship. A court that drew its master wheel solely from voter lists would not need to return the questionnaire, because it would assume that the person was a U.S. citizen, since only citizens are allowed to vote in its district.

Some questions on the qualification questionnaire do not deal with qualifications but are there to help the court monitor its demographic statistics. For example, the Act requires the questionnaire to ask for a person's race and education. 28 U.S.C. § 1869(h). The purpose of this requirement is to provide data the courts need to determine whether they are meeting the Act's policy of "selection at random from a fair cross section of the community." 28 U.S.C. § 1861. If a person fails to answer these questions, especially Question 10 on race, the court's statistical data will be incomplete. However, a clerk does not need to return the questionnaire to solve this problem. He or she can gather this information when the person reports for service.

Similarly, a clerk need not return a questionnaire that does not state a person's occupation (Question 12) unless the person is seeking an occupational excuse or claiming to be exempt from service (as discussed later).

Disqualifying, Exempting, and Excusing Jurors

The second step in analyzing questionnaires is for a judge to determine whether individual prospective jurors are "unqualified for, or exempt, or to be excused from jury service." 28 U.S.C. § 1865(a). If so, the court should not place those persons' names in the qualified wheel. Although it is a judge's responsibility to make these determinations, he or she may do so "upon recommendation of the clerk." 28 U.S.C. § 1865(a).

Disqualifying. The Act sets out eight grounds for disqualifying a person for jury service. A court must disqualify a person who meets one of these grounds, even if he or she would like to serve. The Administrative Office's qualification questionnaire asks about these grounds, but, in some instances, jury staff may have to look beyond the answers to be sure of a potential juror's status.

- **Citizenship, age, residence.** A person who is not a citizen of the United States, who is not at least 18 years old, or who has not lived in the district for at least one year is not qualified to serve as a juror (Questions 1–3). 28 U.S.C. § 1865(b)(1). The general view is that these requirements apply as of the time

jury service begins. Thus, a person who had only lived in a district six months when he or she completed the questionnaire would meet the one-year residency requirement if summoned six months later. Note, however, that the Administrative Office's questionnaire does not specifically ask whether a person has lived in a district for one year. It asks if the person has lived for the "past full year" in the state and country. Jury staff should recognize that some persons who answer no to this question may be able to say yes when summoned. Furthermore, the summons includes a questionnaire that updates information prospective jurors provided on the qualification questionnaire.

- **Literacy.** A person is not qualified to serve as a juror if he or she is unable to speak English or read, write, and understand English well enough to fill out the questionnaire (Question 4). 28 U.S.C. § 1864(b)(2)–(3). It may be difficult to determine whether a person is literate in English, and most courts have found it impractical to develop a policy on this matter. A court may accept a person's assertion that he or she is not literate in English without further inquiry. It may also follow up on people with dubious assertions. An example of a dubious assertion is a person's indicating that he or she is not literate in English, but has an occupation that seems to require such literacy in the United States, such as the occupation of attorney. However, bringing such persons to the courthouse to fill out another form presents cost problems. The goal, above all, is to ensure that those in the qualified jury wheel can in fact speak, write, and understand English.
- **Mental or physical infirmity.** A person is not qualified to serve as a juror if he or she has a mental or physical infirmity that renders him or her incapable of serving (Question 8). 28 U.S.C. § 1864(b)(4). Courts vary in whether and how they verify an assertion of an infirmity. Many simply accept the juror's assertion, on the grounds that they accept other assertions without verification. Others have a policy that specifies when a person must verify an infirmity with evidence, such as a physician's certificate. For example, a court may require verification when a person's employment appears inconsistent with the asserted medical problem.

- **Criminal record.** A court must disqualify for jury service a person who has a felony charge pending;[17] or who has been convicted of a felony in a "State or Federal court of record" and whose civil rights have not been restored (Questions 5–7). 28 U.S.C. § 1865(b)(5). The statutory disqualification applies to persons convicted of a crime punishable by imprisonment for more than one year, regardless of whether a lesser penalty may have actually been imposed. Jury staff in districts with American Indian Courts should be aware that only a few of the more than 120 tribal courts are defined as "courts of record."

  Most jury clerks recommend that the court give special consideration to anyone whose answers, including supporting materials, on criminal records and civil rights restoration are unclear. The legal technicalities may be complex and beyond the comprehension of an individual filling out the questionnaire.

Exempting. Even if a person qualifies for jury service, he or she may be exempt from service. Exemptions reflect the policy decision that certain kinds of work are sufficiently important that those who perform such work should not have to interrupt it by jury service.

According to the Act, a court's jury plan must exempt three categories of persons from jury service (Question 13):

1. members of the Armed Forces in active service;
2. members of state or local fire and police departments; and
3. "public officers" of all branches of federal, state, and local government.[18] 28 U.S.C. § 1863(b)(6).

A person who is exempt, like a person who is disqualified, may not serve on a jury even if he or she wishes. Also like a person who is disqualified, a person in an exempt category at the time he or she fills out the questionnaire may not be in that category when the court issues a summons.

Jury staff may have to return a questionnaire to a person who did not complete the question on exemptions (Question 13), but whose answer to the question on occupation (Question 12) indicates that he

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17. A felony is a crime punishable by imprisonment for more than one year.

18. 28 U.S.C. § 1869(i) defines public officers as those persons elected to public office or "directly appointed by a person elected to public office."

or she may be in an exempt category. Although the questionnaire refers to full-time membership in the exempt categories, a person with part-time membership may also be exempt. For example, part-time or full-time fire fighters or state legislators may be equally unable to serve.

Excusing. In contrast to the automatic ban for persons who are disqualified or exempt from jury service, a court cannot grant an excuse unless a person requests it. The Act states that a court must excuse a person in the category of voluntary safety personnel at the person's request.[19] 28 U.S.C. § 1863(b)(5)(B). The Act also allows a court to excuse from jury service members of other groups or occupations specified in the court's jury plan. 28 U.S.C. § 1863(b)(5)(A). A court must indicate in its jury plan the groups and occupations whose members qualify for individual excuse requests. In 1980, the Judicial Conference recommended that district courts use only five categories, which are given on two of the Administrative Office's standard qualification questionnaires—AO Form 178D Option A and AO Form 178.[20] These categories are the following:

1. persons over the age of 70;
2. persons who served as grand or petit jurors within the last two years;[21]
3. persons who provide essential care for children under age 10 or for aged or infirm persons;
4. persons so essential to the operation of a business, commercial, or agricultural enterprise that it would close if they had to serve on a jury; and

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19. For the purposes of 28 U.S.C. § 1863(b)(5)(B), "voluntary safety personnel" means individuals serving a public agency (as defined in § 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as fire fighters or members of a rescue squad or ambulance service.

20. *Report of the Proceedings of the Judicial Conference of the United States*, September 1980, p. 107.

21. This category is pursuant to the prohibition in 28 U.S.C. § 1866(e) that in a two-year period, a person is not required to "(1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror."

5. persons in professional categories, such as doctors and lawyers.

A third form, for automated courts, AO Form 178D Option B, has only two excuse categories preprinted: persons over the age of 70, and persons who served as grand or petit jurors within the last two years.

The questionnaires encourage persons who request excuses to explain the reasons for their requests in the "remarks" section. This encouragement reflects the fact that an excuse must be clearly applicable if a court is to grant a request for it. For example, some courts do not recognize state jury service as meeting the criterion for having served as a grand or petit juror within the last two years. Thus, these courts may want to know whether a person's recent jury service was in state or federal court.

A judge must grant an excuse only if the judge is satisfied that the person requesting it is a member of a group specified in the court's jury plan. There is a difference between group excuses, which prospective jurors may request on the questionnaire, and "hardship excuses," which prospective jurors may request at the time a court summons them for jury service. A court may grant a temporary excuse "upon a showing of undue hardship or extreme inconvenience." 28 U.S.C. § 1866(c). (See pages 39–40 for a full discussion of hardship excuses.)

Facilitating judicial decision making. The judge is responsible for determining disqualifications, exemptions, and excuses. 28 U.S.C. § 1865(a). Courts can establish administrative systems to facilitate (but not supplant) the judicial determination. Typically, these systems require jury staff to sort the questionnaires into groups. These groups could be persons who are clearly eligible to be placed in the qualified wheel, persons who are clearly not eligible to be placed in the wheel, and persons whose status is in doubt and need further consideration. After sorting questionnaires, a clerk can send those that need further consideration to the judge for a final decision.

Court policy, adopted by judges, establishes the guidelines for sorting. For example, the policy may be to have clerks send the sorted questionnaires to the jury judge with a cover memorandum for each group. The memorandum could either recommend a disposition or request a determination of eligibility if eligibility is in doubt. As a matter of judicial economy, some courts put the names of persons with doubtful questionnaires in the qualified wheel, to be resolved if the person's name is actually drawn for service.

Placing the Names of Qualified Persons in the Qualified Wheel

The Act directs the clerk to indicate each person's status (i.e., qualified, disqualified, exempt, or excused) on the person's questionnaire and on the list of jurors to whom the court has sent questionnaires if the court requires such a list.[22] 28 U.S.C. §§ 1865(a), 1864(a). If more than one staff member enters the status notations, each staff member should probably initial his or her notation to create a record of who did what. Some clerks instruct jury staff or anyone else working on the list to initial all notations.

The names of the qualified persons marked on the list then become the qualified jury wheel. Usually, the computer prepares this list using status data that the court provides to the computer operator.

A court may have one or more sets of jury wheels for its district. The number of jury wheels will depend on factors such as the number of places of holding court in the district, whether the district has statutory divisions, and whether the district has been broken down into divisions for administering juries. For example, a district with no statutory divisions and only one place of holding court may have only one set of jury wheels. If a district with no statutory divisions has three places of holding court, the district may be divided into three administrative divisions, each with its own set of jury wheels.

Emptying and Refilling the Qualified Wheel

As noted in chapter 3, the Act states that a court must empty and refill its master jury wheel at least once every four years. 28 U.S.C. § 1863(b)(4). The Act contains no similar provision for emptying and refilling the qualified jury wheel. However, a court cannot replenish its qualified wheel from an outdated master wheel. Thus, most courts empty their qualified wheels shortly after refilling their master wheels. This method keeps the qualified wheel current while avoiding the problem of having no qualified wheel, which would occur if a court emptied both wheels simultaneously.

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22. Most clerks make the notation in the "official use" space next to the signature line, rather than in the less convenient comment box on the reverse side.

5 Selecting and Summoning Prospective Jurors

Once a court creates a qualified jury wheel, its next step is to select and summon prospective jurors from the qualified jury wheel. In the context of jury selection, a summons is a court order that a person appear in court or be available for possible selection as a grand or petit juror.[23] A court requires a person, unless it excuses him or her, to serve for a specific length of time, known as a "term of service."

Effective administration at this stage of the jury process requires a court to

- determine the term of service and provisions for "on-call" service;
- establish procedures for selecting and summoning prospective jurors;
- establish hardship excuse policies; and
- establish policies for exclusions.

Determining the Term of Service

A person's term of service is the length of time a court requires him or her to serve on a jury panel, which is the group of prospective jurors from which a court chooses juries for particular cases. Most courts require persons, as part of their service on the panel, to contact a Code-a-Phone (automatic answering device)[24] before reporting in person; a few require them to report directly to the court.

23. Unless specified otherwise, this chapter and the next two deal with petit jury administration.

24. Although most courts use the term "Code-a-Phone," because Code-a-Phone is a trademark, this handbook uses the term "automatic answering device" or "answering device."

Required Maximum Service Terms; Local Variations

The length of a term of service is a policy matter for a court to decide when developing its jury plan. However, the length of the term must be consistent with the Jury Selection and Service Act's provision that a person shall not have to attend court or serve as a juror for more than 30 days in a two-year period. 28 U.S.C. § 1866(e). An exception to this provision is made when a juror must serve in a trial that is longer than 30 days. The term of service may also be longer than 30 days if the court does not require persons to be at the court every day of their term of service.

In deciding the length of the term of service, a court may want to consider how it will affect other aspects of jury management. For example, the length of the term will affect the number of persons a court summons. The longer the term, the fewer jurors it needs, because the same jurors can be used for a larger number of trials. The length of the term also affects logistical considerations, such as frequency of orientation for jurors (discussed in chapter 7). In addition, if the term of service is long, more persons are likely to assert that jury service is a hardship, and therefore the number of excuses requested and the number of jurors a court must summon are likely to be larger.

Whatever the length of the term of service, courts may structure terms in different ways. The most common are fixed terms, limiting terms, combination terms, and the "one trial/one day" system.

With fixed terms, a prospective juror must contact the court via an automatic answering device each evening for a fixed period of time, such as one month or two weeks. A recording will inform the person whether he or she needs to report to court the next day.

In courts that use limiting terms, a person has a fixed period of service; however, he or she only contacts the court on specified days or weeks within the period. For example, a person may have to contact the court one week a month during a three-month term.

In courts that use a combination term, a person must contact the court a specific number of times, or serve in a specific number of trials, or report to the court in person a specific number of times, whichever requirement is met first. For example, a court may require a juror to contact the automatic answering device five times for jury selection, or serve on two trials, or give the court 10 days of service at the courthouse, whichever requirement is met first. A juror who contacted the court twice and served on two trials would have completed

his or her term of service. A juror who contacted the court once and served on one trial that lasted 10 days would also have completed his or her term.

In a one trial/one day system, a person reports to the courthouse once. If selected to serve in a trial that day, the person serves in that trial and only that trial. If not selected, the person has fulfilled his or her obligation and does not have to report again. The one trial/one day system is very popular in state courts and in a few federal courts.

The trend in the federal judiciary is to require shorter terms of service. Shorter terms are easier for jurors financially and in other respects, and thus result in fewer requests for excuses. They also allow more citizens to participate in jury service. In addition, a court can ease the administrative difficulties once associated with shorter terms by using technology, such as computer-mailed summonses and orientation films or videotapes.

At its September 1986 meeting, the Judicial Conference recommended that absent special circumstances, district courts adopt a term of no more than two months for petit jury service.[25] It recommended that courts use shorter terms if local circumstances permit.

Use of On-Call Jurors

Because courts do not always know how many jurors they will need on a given day, most place prospective jurors "on call." On-call status means that the prospective juror should be prepared to report to court during his or her term of service; however, the court will only require the juror to come in as needed. This system benefits prospective jurors by reducing the chance that they will report for service on a day they are not needed. It benefits courts (and in turn, the government) because they only have to pay on-call jurors for the days they actually report to court.

Contacting on-call jurors. The easiest way to communicate with on-call jurors is with an automatic answering device that gives prospective jurors a prerecorded message when they call it. Courts instruct the prospective jurors to call the answering device at a designated time, typically the evening before the anticipated day of service.

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25. *Report of the Proceedings of the Judicial Conference of the United States*, September 1986, p. 91.

The prerecorded message gives jurors final instructions on whether to report.

For example, if a court randomly assigns jurors numbers in advance, the prerecorded message could state that Jurors 1 through 80 should report the next day. It could also give a number prospective jurors could call to reach a deputy clerk in an emergency or to ask questions that the prerecorded message does not answer.

Automatic answering devices are useful to both jurors and courts. They enable courts to use jurors efficiently. Court personnel are not burdened with having to try to reach jurors at their homes or workplaces, which can mean unanswered phones or messages that are not received. Jurors can call when it is convenient for them to do so.

Ensuring random selection. When using an answering device to contact jurors, a court must be sure that it preserves the Act's goal of random selection of jurors. Assigning each prospective juror a number, as in the example given, would do so; using alphabetical designations may not. For example, summoning all jurors whose last names begin with the letters A through G may at least risk the appearance of non-random selection.

An approach that could jeopardize random selection is having the answering device give the message that all callers should report, and then, when the court has received all the calls it desires, changing the message to one that tells all callers not to report. If prospective jurors realize that early calls will produce a different message than later calls will, they could tamper with the procedure. In addition, prospective jurors could not call a second time to verify the message.

Designating jurors for on-call status. Although most courts place all jurors on call, this method may not be feasible in all districts, such as those in which jurors must travel long distances to reach the courthouse. Courts that do not place all jurors on call must develop a method of designating which jurors will be on call. Various methods are available. For example, a court may randomly select prospective jurors for on-call status when drawing names for summoning from the qualified jury wheel. In its summons, the court would instruct the jurors to call on a specific date to learn whether they should report for jury duty the next day. A court instructs jurors who are not on call to report on a specific date.

Whatever the method used, it is wasteful for a court to have all summoned jurors report on the first day of service and then place

some on on-call status. This approach substantially increases juror inconvenience and costs to the court.

Selecting and Summoning Jurors

After determining the term of service and provisions for on-call service, a court is ready to select and summon jurors.[26] As with most other aspects of the jury selection process, jury staff must take several factors into account when proceeding.

Using Random Selection Procedures

Upon court order, the clerk or jury staff select names of prospective jurors from the qualified wheel at random. Staff then place the names on either grand or petit jury panels and summon the prospective jurors for jury service. 28 U.S.C. § 1866(a), (b).

In many ways, selecting names from the qualified jury wheel is similar to selecting names from the master jury wheel. The Act requires random and public selection for both, and in most courts, computers do most of the actual work for both. (See pages 13–17 for a discussion of random and public selection.)

Establishing the Number of Jurors to Summon

Many factors affect the number of jurors a court will need during a given period. The following are among the factors that jury staff should consistently review in determining this number:

- methods of jury selection (i.e., pooling, multiple voir dire, bunching, staggering, as discussed on pages 46–50);
- number of jury trials a court is likely to have during prospective jurors' terms of service;
- length of the term of service, which affects the number of excuses a court is likely to approve;

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26. In the fall of 1988, Congress authorized the Judicial Conference to "develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure" rather than in the two separate procedures provided for in the Act. For details, see Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, 102 Stat. 4642 (1988).

- road conditions and other factors affecting jurors' ability to travel;
- panel size, which is in turn affected by the type of case (e.g., criminal or civil; routine or highly publicized);
- number of peremptory challenges (see pages 51–52) and any variations that a court or an individual judge allows;
- number of likely challenges for cause (see pages 50–51);
- number of sworn jurors and alternates that particular types of cases and particular judges require (see pages 44–45); and
- number of absent, ill, and visiting judges.

A court that keeps good records of its past use of jurors will be better able to estimate the number of jurors it needs. Simply summoning enough jurors to ensure a more than adequate supply is not efficient juror utilization.

Narrowing the Gap Between Predicted and Actual Trial Starts

Cases that settle just before trial are the main reason courts often summon more jurors than they need. Therefore, courts have adopted two methods of improving their ability to predict the number of cases that go to trial. Courts may choose to use both of these methods, which are not inconsistent with each other.

First, approximately half of the courts have local rules that authorize judges to impose monetary sanctions on lawyers who wait until right before the trial to settle. The purpose of these rules is to encourage parties that will settle anyway to do so before a jury has been seated. In 1986, the Judicial Conference urged all courts to adopt such rules.[27]

Second, a court may analyze the past relation between trials scheduled and trials held both for the entire court and for each judge. Such analysis might reveal, for example, that for every 10 cases for which an individual judge requested jurors, only 6 went to trial. If so, the court could then use this information as part of a court-wide effort to improve jury utilization, including decreasing the number of jurors it requires to report on a given day.

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27. *Report of the Proceedings of the Judicial Conference of the United States,* September 18–19, 1986, p. 91.

Determining How Often to Draw Names for Summonses

Courts that use juries on a regular basis often issue a standing order on jury selection. This order allows jury staff to draw names from the qualified jury wheel and summon prospective jurors as needed.

For example, a court might issue an order directing that jury staff draw names and issue 500 summonses at the beginning of each month. The prospective jurors would then be eligible for service the month after they received the summons. Or, the order could specify that jury staff draw a fixed number of names and issue summonses for every month except August and December, when the court has less jury trial activity and requires fewer jurors.

Courts that do not use juries on a regular basis, typically smaller courts, often summon jurors after scheduling a trial.

Determining Summons Contents; Related Materials

Most courts use preprinted summonses that the Administrative Office provides (AO Form 222 for nonautomated courts; AO Form 222-D and AO Form 222-E for automated courts). Many courts, sometimes in a separate mailing, also provide the summoned jurors with answers to questions that should not wait until the in-court orientation that jurors receive.

Basic summons contents. The summons should

- inform the prospective juror that failure to comply with it is punishable by law;
- state the specific date and time a prospective juror should report to court, or state the prospective juror's term of service (and note that the person will be notified of when to report at a later date);
- state the address of the courthouse where the prospective juror should report;
- state that the court will excuse prospective jurors only for undue hardship or extreme inconvenience (discussed in the next section);
- contain either a preprinted or stamped seal of court, and the name of the clerk who issues the summons on the envelope; and
- provide information about juror fees.

For courts that ask prospective jurors to phone for confirmation of their starting date, the summons should state the number to call, the time to call, and whether the court accepts collect calls or reimburses for toll calls.

Juror background information. The Administrative Office's summonses for automated courts include a "juror information card" that prospective jurors should complete and return in an envelope provided. This card (AO Form 229) updates information that prospective jurors supplied on the qualification questionnaire, such as the juror's residence and occupation (see page 20). It also asks for a person's Social Security number for tax purposes. Courts that are not automated may mail a copy of the juror information card along with the manually prepared summonses.

Initial orientation information. The summons is usually a person's first opportunity to learn what being selected as a prospective juror entails. To resolve misconceptions and apprehensions about jury service, many courts include with the summons a pamphlet, either the court's own pamphlet or the Administrative Office's *Handbook for Trial Jurors Serving in the United States District Courts* (see page 58).

When mailing the summons, it is important for a court to tell jurors whether they will have to contact it by calling the automatic answering device or report to the courthouse. A court that places prospective jurors on call should explain, either in a pamphlet or in a form that accompanies or is sent out at the same time as the summons, that this procedure reduces the chance that jurors will have to report to the courthouse unnecessarily.

Serving the Summonses

Most jury staffs serve (the legal term for deliver) summonses at least a month before prospective jurors must report to the court. This time allows jurors to arrange their schedules and jury staff to attend to procedural details.

The Act permits the court to serve its jury summonses in person or by registered, certified, or first-class mail. It requires staff who mail the summonses to make an affidavit that they did so and attach to the affidavit any registered or certified mail receipt. 28 U.S.C. § 1866(b).

Most courts use first-class mail because it provides savings in time and expense. First-class mail also reduces the number of summonses

that are unclaimed or undeliverable due to some citizens' reluctance to accept registered or certified mail from a court.

Establishing Hardship Excuse Policies

In addition to the category of group excuses discussed in chapter 4, prospective jurors may ask the court to excuse them from service upon a showing of "undue hardship or extreme inconvenience, for such period as the court deems necessary." 28 U.S.C. § 1866(c)(1). Prospective jurors may request these excuses, known as hardship excuses, upon receipt of the summons or when they report for jury service. The request may also be made by mail, by telephone, in person before the day of service, or by a party acting on behalf of the juror being summoned.

The Act states that the court shall advise excused jurors that it will summon them again at the end of the excused period. 28 U.S.C. § 1866(c)(1). Or, if the court's jury plan so provides, the court shall reinsert the names of persons granted hardship excuses into the qualified jury wheel for selection. 28 U.S.C. § 1866(c)(1).

For some persons, the reason for the excuse may be unlikely to change. For example, a person in a rural area may have no means of transportation. For such persons, a court may decide that it would be impractical to return their names to the qualified wheel.

Whatever the resolution, the clerk must note the names of jurors whom a court excuses from service[28] (28 U.S.C. § 1866(c)) and the reasons why (28 U.S.C. § 1866(d)). These notations may be made on the qualification questionnaires.[29]

Granting Excuses

According to the Act, the court, or the clerk under the supervision of the court if the court's jury plan so provides, may grant hardship excuses. 28 U.S.C. § 1866(c)(1). Many courts have found it useful to designate a specific judge (and perhaps an alternate) to act on requests for such excuses.

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28. The clerk must also note the names of persons whom a court disqualifies, exempts, or excludes from service, as discussed in chapter 4.

29. Courts that select names from the master jury wheel by hand may put information regarding a juror's status (e.g., qualified, disqualified, excused) on cards, known as jury wheel cards, rather than on qualification questionnaires.

Processing Excuses

Some courts give the clerk guidelines on what constitutes satisfactory grounds for excusing a juror from service. In courts in which judges handle excuse requests, these guidelines also allow the clerk to send the requests to the judge in three groups:

1. recommend granting as demonstrably reasonable;
2. recommend denying as demonstrably unreasonable; and
3. no recommendation, as falling between reasonable and unreasonable.

The staff can group the requests to make it easier for the judge who handles excuses to review the requests and indicate decisions.

Once a decision has been made, the jury staff or clerk can promptly inform the juror by telephone or by form letter. Prompt action on excuses reduces the number of telephone calls from jurors regarding their status.

Controlling Excuse Requests

Courts have different opinions as to whether they should encourage jurors who intend to seek excuses to seek them promptly. On the one hand, such encouragement may come close to encouraging excuse requests. On the other hand, it may reduce the number of last-minute excuse requests.

Granting Deferrals

Some prospective jurors ask to defer their service from one date to another within a current term of service. Some courts have taken the position that these are scheduling matters, not excuses, and thus allow jury staff to grant them without judicial approval. In other courts, deferrals require judicial approval. Jury staff should look at their court's jury plan, which may state the court's policy on deferrals.

Establishing Policies for Exclusions

In addition to hardship excuses, the Act allows the court to exclude jurors unable to render impartial jury service or whose presence as a juror would be disruptive. 28 U.S.C. § 1866(c)(2). The court may also exclude jurors whose presence would be "likely to threaten the secrecy

of the proceedings, or otherwise adversely affect the integrity of jury deliberations." 28 U.S.C. § 1866(c)(5). The use of these provisions is relatively rare.

6 Impaneling the Jury

The final step in the jury selection process is impaneling a jury. "Impaneling" refers to the process of examining, challenging, and accepting individuals from the jury panel to serve on the jury in a particular case. The main component of this step is the voir dire examination, during which judges and lawyers may have prospective jurors answer questions about their attitudes and background.[30]

Based on the voir dire, lawyers may challenge jurors, or ask the judge to exclude them from the panel. Lawyers may exercise challenges "for cause," stating a specific reason why the juror would not be able to render an impartial verdict in the particular case. Lawyers may also exercise a limited number of "peremptory challenges," which means they need not give a reason for having a particular juror excused. A court must assemble jurors for the voir dire, seat them in the jury box, and administer the final jury oath. Special considerations apply in high-publicity cases.

Assembling Jurors for the Voir Dire

As mentioned in chapter 5, a jury panel, or venire, is the group of prospective jurors a court summons to appear on a stated day and from which it chooses juries for particular cases. There are usually about 18 prospective jurors for a civil case and 35 for a criminal case. The Jury Selection and Service Act makes no reference to selecting panels from a larger number of summoned jurors. Although the Act

30. Judges take different approaches to the voir dire process. The procedures followed by six experienced federal trial judges are presented in G. Bermant, *Jury Selection Procedures in the United States District Courts* (Federal Judicial Center 1982). An additional reference is Administrative Office of the U.S. Courts, *Petit Juror Management Practices* (May 1985), available from the AO printing center in Forestville, Maryland.

does not require courts to select panels at random, most courts do so to protect the spirit of the Act and public confidence in the process.

Depending on the number of its judges and on its general operating procedures, a court may select one or more juries on a particular day. A court that selects one jury needs to summon only one panel; a court that selects several juries on the same day must summon several panels. After the panel is assembled in the courtroom, the judge usually addresses it to discuss the procedure, the nature of the case to be tried, the schedule of trial times, and other information he or she deems necessary.

Jury Size and Alternates

The size of juries and number of alternates a court permits affect the number of prospective jurors that jury staff summon.

Jury size. Rule 23(b) of the Federal Rules of Criminal Procedure requires a 12-person jury for criminal cases. However, it allows the parties to agree to a verdict by a jury of fewer than 12 if the court finds it must excuse one or more of the jurors after the trial begins. Rule 23(b) also lets the judge authorize a verdict by an 11-member jury if one of the jurors must be excused after the jury has begun its deliberations.

Rule 48 of the Federal Rules of Civil Procedure allows parties in civil cases to agree to a jury of any size and to a non-unanimous verdict. Almost all of the federal district courts have local rules that provide for six-member juries in civil cases, and such rules have been upheld by the U.S. Supreme Court.

Alternates. Courts usually select alternate jurors so that a trial can continue if a juror becomes ill or cannot serve. Federal Rule of Civil Procedure 47(b) and Federal Rule of Criminal Procedure 24(c) both allow a court to impanel up to six alternate jurors and permit additional challenges for them (see pages 50–52).

Although some courts routinely use the same number of alternates in all civil or criminal cases, jury staff should conduct a yield analysis to help predict the need for them. A review of juror utilization records may show that a court uses alternates infrequently; in short trials (those that last only one day, or possibly two) there is often no need for alternates.

Some courts eliminate the need for alternates in civil cases through the use of stipulations (agreements). Typically, the stipulation

states that if one of the jurors must be excused after the trial begins, the parties agree to continue and be bound by the jury's verdict. Judges can seek stipulations in criminal cases as well, but most find it inappropriate to do so because of the higher level of legal protections accorded defendants in criminal cases.

Panel Size Needed

A reasonably accurate way to calculate the number of jurors needed for a panel is to add the following: the number of jurors needed, the probable number of alternates, the likely number of challenges for cause, the number of peremptory challenges allowed each party, and the likely number of challenges for alternates. Note that the number of peremptory challenges allowed may vary, so it is important to consult with the judge's staff on this in non-routine cases.

In routine civil cases in which a court uses six-person juries, the number of jurors could be calculated as follows:

Jury members	6
Challenges for cause	1
Peremptory challenges	6
Alternates	1
Challenges for alternates	2
Total	16

Some courts routinely increase the total figure by 10 percent, for example, from 16 to 18 in the preceding example, to provide a cushion for jurors who do not show up or have last-minute excuses.

Calendar Coordination

Changes in judges' plans and in trial schedules make it essential for jury staff to coordinate their calendar with that of each judge. Knowing the latest information on settlements, postponements, and switches from jury to bench trials enables jury staff to call in a minimum number of jurors on any given day. Usually a judge's secretary or law clerk or the courtroom deputy is most knowledgeable about the judge's calendar and the best person with whom to be in contact.

Jury staff must also be aware of any requirements for backup trials; a judge may require all parties and jurors to be available on short notice so as to allow a second scheduled trial to start whenever the first finishes or settles. As discussed in chapter 5, a court can use an automatic answering device to notify jurors in this situation and in others, such as last-minute settlements.

Conducting the Voir Dire

"Voir dire" is a legal term meaning "to speak the truth." It refers to the process by which judges and lawyers may have prospective jurors answer questions about their attitudes and background. Its purpose is to elicit any information that demonstrates that a prospective juror could not or would not serve without bias or prejudice in a particular case. At this stage, jury selection switches from a random process to a nonrandom one.

In the federal system, voir dire may be conducted in one of several ways. In some courts, judges allow the lawyers to conduct the entire voir dire. More typically, the judge begins the voir dire with general questions, such as whether jurors know anyone involved in the proceeding and how jurors are employed. The judge, and perhaps the lawyers, often then ask specific questions that are relevant to the case at hand. In some instances, jurors are questioned individually. More often, they are questioned in groups.

Whatever method is used, Federal Rule of Civil Procedure 47(a) and Federal Rule of Criminal Procedure 24(a) provide that a judge who conducts the voir dire must give lawyers an opportunity to ask additional questions or submit their questions to the judge. Then, the judge may ask these questions if he or she thinks the questions are proper.

Judges may select one jury at a time or more than one jury on the same day for several different trials. Selecting one jury at a time is known as "single voir dire"; selecting more than one is known as "multiple voir dire."

Single Voir Dire

Single voir dire usually occurs immediately prior to trial. It is most common in courts in which several judges sit in the same courthouse.

The jury staff can send jurors not chosen for one trial to another courtroom for possible selection in another trial.

There are three techniques that judges who sit in multi-judge courthouses and select juries immediately prior to trial can use to ensure efficiency in single voir dire: pooling, bunching, and staggering. These techniques make single voir dire less burdensome to prospective jurors and less costly to taxpayers. They work best when judges, their staff (especially courtroom deputies), and jury staff cooperate closely, on a continuing basis.

Pooling. Pooling requires all prospective jurors to assemble at a centrally located area of the courthouse, such as the juror lounge or a large courtroom. Jury staff then place them in panels for assignment to judges for jury selection. As juries are selected, the court instructs unassigned jurors to return to the jury pool for assignment to later panels.

Pooling makes it easier for courts to use jurors who are not selected to sit in a particular trial. It may also allow a court to reduce the number of jurors it would summon if each trial began on a different day.

Jury staff should know, based on past practice, that some of the scheduled trials will probably settle. Thus, a court can reduce the total number of jurors it requests for any one day. Of course, jury staff should build a margin of error into their prediction of the number of jurors to summon. Moreover, it is unwise to reduce the number of jurors summoned without the judges' cooperation. If all the trials start, contrary to the prediction, one or more judges will have to wait to start their trials until unassigned members of other panels are available.

Bunching. Bunching is a corollary of the pooling strategy; it involves limiting trial starts and jury selection to a particular day or days of the week, or a particular week in a month. This strategy maximizes the effectiveness of the jury pool by ensuring that the maximum possible number of jury selections occur on the same day. Bunching is especially important in small and medium-size multi-judge courts that do not have a large number of judges to use unselected jurors.

There is some disagreement among those knowledgeable about juror utilization as to whether a court should bunch trial starts, and thus juror selection, on Mondays. Some think that cases are especially apt to settle the weekend before a Monday trial date, when it may be too late for a court to reduce the number of jurors summoned for Monday.

Many courts, however, do not like to start trials later in the week because it increases the possibility of Saturday court sessions.

Automatic answering devices can often solve the dilemma of whether to bunch trial starts and juror selection on Mondays. They enable a court to alert prospective jurors as late as Sunday evening not to report on Monday. Another alternative used by some courts is to schedule motion hearings, guilty pleas, or other proceedings on Monday and have jury selection begin on Tuesday. This method allows jury trials to proceed without interruption.

Staggering. Staggering trial starts follows naturally from the bunching procedure. It occurs when judges drawing panels on the same day do so at different times to avoid sharp peaks in demand for jurors. This makes it easier to use challenged or unassigned jurors from earlier jury selections, increasing the efficiency of pooling jurors.

For example, if a court has four judges, and two judges begin voir dire for civil cases at 9:00 a.m. and two begin at 10:30 a.m, jury staff could send panels of 18 to the two judges that start at 9:00 a.m. If these judges each selected 7 jurors (for a 6-person jury plus 1 alternate juror), they could each return 11 persons to the jury pool. Jury staff could use the 22 returned persons plus 14 new jurors to create two new panels of 18 for the two judges that begin voir dire at 10:30 a.m. The total number of persons required for jury selection that morning would be 50 (18 + 18 + 14), whereas starting all trials at the same time would require 72 (18 x 4).

If the judges in a court vary in their preferences for times to start trials (e.g., some start at 8:30 a.m., others at 9:00 a.m., others at 10:00 a.m.), jury staff can use these natural staggering preferences. Or, a judge might be willing to use a "buddy system," pairing himself or herself on a particular day with another judge who also has trials set for that day. By agreement, one judge would complete voir dire before the "buddy" started, thus reducing the number of jurors needed for voir dire, as shown in the preceding example.

Although single voir dire is most common in multi-judge courthouses, judges in single-judge courthouses will sometimes use this method. For example, a judge may select a jury immediately prior to trial if the case is highly publicized and the voir dire is likely to be unusually long. Multiple voir dire would not be efficient because the judge is unlikely to have time to conduct voir dires for other cases. In fact, if a trial does not start the day of voir dire, multiple voir dire may

be more expensive than single voir dire because the court would have to pay jurors for the day of voir dire and the days of trial.

Multiple Voir Dire

Multiple voir dire, the method by which judges select more than one jury on the same day for several different trials, is often used by judges who select juries several days or weeks in advance of the trial. It is more common in single-judge courthouses, which do not have the option of sending jurors not selected for one trial to another courtroom for possible selection in another trial. With multiple voir dire, judges can increase efficiency by placing jurors eliminated from one trial in a jury panel for another.

Multiple voir dire has two characteristics that create the need for special safeguards. First, jurors might be selected for more than one trial. Judges take care, however, not to select jurors for cases scheduled back to back if the court's policy is to start a second jury trial as soon as the first trial's jury begins deliberations. They also often avoid selecting the same jurors to serve in similar criminal cases, to avoid the chance that jurors would participate in a guilty verdict and then hear similar facts in a subsequent trial.

Second, the delay between selection and trial creates the need for safeguards. Jury staff should have a system for notifying jurors of settlements in any of the cases in which they were selected to serve. Also, judges often allow lawyers to conduct additional voir dire on the day of trial. This later voir dire gives the parties and the court the opportunity to learn whether a juror was exposed to prejudicial information about a case in the days or weeks before trial, despite a judge's instruction not to read or listen to news accounts about it.

In criminal cases, some judges will not administer the final oath (discussed later) until the trial begins. This practice is based on the view that the double jeopardy provisions of the Fifth Amendment (a person may not be tried twice for the same crime) attach when the oath is administered. If so, it would be unconstitutional for a court to try a person if the original jury had to be dismissed. Other judges do not believe that mistrials in this circumstance cause double jeopardy problems and may administer the oath as soon as the jury is impaneled.

Although multiple voir dire is more common in single-judge courthouses, judges in multi-judge courthouses can use this method. It

simply requires a high degree of effective coordination and communication between courtroom deputies and jury staff.

If the court completes the voir dire in advance, the actual trials can begin with opening statements rather than juror selection. Also, where it is authorized by circuit law, magistrates may conduct multiple voir dire for trials the judge will conduct, thus saving the judge substantial amounts of time.[31]

The strategies of pooling, bunching, and staggering can also be adapted for multiple voir dire in a multi-judge courthouse.

Exercising Challenges

Challenges are vital ingredients in the jury impanelment process. A challenge is a request by an attorney during the voir dire that a certain juror not be selected to serve in that case. There are two types of challenges—challenges for cause and peremptory challenges; both must be considered in anticipating the number of jurors to be summoned.

Challenges for Cause

According to the Act, a judge may excuse a juror (or jurors) for "cause." 28 U.S.C. § 1870. Cause means there is a specific reason a juror will not be able to render an impartial verdict, such as a business or personal relationship with a party, victim, witness, or attorney in the case, or a prejudiced state of mind. If a judge finds such a reason, he or she may excuse the juror at the juror's request or at the request of one of the lawyers.

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31. A magistrate is a judicial officer of the district court who is subordinate to a judge and whose duties fall into four broad categories: conducting initial proceedings in criminal cases, trying misdemeanors, handling pretrial matters and other proceedings referred by judges, and trying civil cases. A court may also assign magistrates additional duties that are not inconsistent with the Constitution and laws of the United States.

The Fifth Circuit recently held that magistrates could not select jurors in felony trials in *United States v. Ford*, 824 F.2d 1430 (5th Cir. 1987), *cert. denied*, 108 S. Ct. 741 (1988). However, the Second and Ninth Circuits have approved the practice. *United States v. Garcia*, 848 F.2d 1324 (2d Cir. 1988); *United States v. Peacock*, 761 F.2d 1313 (9th Cir.), *cert. denied*, 474 U.S. 847 (1985).

There is no limit on the number of jurors a court may excuse through challenges for cause. In most cases, judges do not grant, and lawyers do not request, many. In high-publicity cases, however, the numbers tend to be large. Jury staff should keep records of challenges for cause, by type of case and how often the court granted them. Doing so will make it easier to predict the number of jurors a court is likely to excuse through challenges for cause in similar cases in the future.

Peremptory Challenges

In addition to challenges for cause, lawyers may exercise a small number of challenges for which they need not give a reason; these are called "peremptory challenges." The peremptorily challenged juror is simply excluded from the case. As summarized in the following chart, the number of peremptory challenges to which a party is entitled depends on the type of case, and in some cases, it is different for the plaintiff than it is for the defendant.

Number of Peremptory Challenges Allowed

	Plaintiff	Defendant	Rule
Criminal Cases			
Capital Case	20	20	Fed. R. Crim. P. 24(b)
Felony Case	6	10	Fed. R. Crim. P. 24(b)
Misdemeanor	3	3	Fed. R. Crim. P. 24(b)
Civil Cases	3	3	28 U.S.C. § 1870
No. of Alternates			
1 or 2	1	1	Fed. R. Civ. P. 47(b); Fed. R. Crim. P. 24(c)
3 or 4	2	2	Fed. R. Civ. P. 47(b); Fed. R. Crim. P. 24(c)
5 or 6	3	3	Fed. R. Civ. P. 47(b); Fed. R. Crim. P. 24(c)

The judge has discretion to allow additional peremptory challenges in cases involving more than two parties. The Act provides this

authority in civil cases (28 U.S.C. § 1870); Federal Rule of Criminal Procedure 24(b) governs in criminal cases. The parties may stipulate to fewer challenges. In addition, even if entitled to a large number of peremptory challenges, the parties do not have to exercise all of them. In some areas, the local bar, by tradition, does not do so.

As discussed later, certain selection methods result in parties not using all of their challenges. If a yield analysis shows consistent patterns of non-use of peremptory challenges, jury staff, with the judge's permission, may be able to reduce the panel size sent for voir dire.

Use of Juror Lists and Questionnaire Data

To help counsel prepare for voir dire, some courts provide them with information that helps them determine which jurors to challenge for cause or to challenge peremptorily. This information can include the jurors' qualification questionnaires, their updated questionnaires sent with the summonses, or specially prepared lists containing limited questionnaire information about the prospective jurors. However, the Act states that a court shall not disclose records or papers used in the jury selection process unless the jury plan provides for disclosure, or the parties need the information to challenge the court's compliance with the statute's jury selection procedure. 28 U.S.C. § 1867(f). Thus, jury staff should ask the court for a formal policy specifying what, if any, information they can give to counsel prior to voir dire (e.g., name, address, and occupation of jurors).

Note that the Act directs the jury plan to "fix the time" when the names drawn from the qualified wheel shall be disclosed to the parties and the public. 28 U.S.C. § 1863(b)(7). However, the Act does not mandate that the names be made public, and it authorizes the court to keep juror names confidential "where the interests of justice so require." 28 U.S.C. § 1863(b)(7). The reason for making the lists available is to give counsel sufficient time to prepare for voir dire. However, if the court gives counsel too much information or information too far in advance of the trial or voir dire, the possibility of tampering, harassment, or other improper contact with members of the panel exists.

Methods of Exercising Challenges

Federal judges use two basic methods of permitting attorneys to exercise challenges: the strike method and the sequential method.

Strike method. The strike method allows parties to exercise challenges with full knowledge of the characteristics of all potential jurors. Under this method, a judge first rules on all challenges for cause and then seats a panel, taking into account the number of jurors needed for a particular trial, any alternates needed, and peremptory challenges. From this panel, the attorneys exercise peremptory challenges.

Courts differ in how they allow parties to exercise peremptory challenges under the strike method. In some courts, parties use their "strikes" simultaneously (which sometimes leads to both parties striking the same person). More often, the parties exercise their strikes in sequence.

Sequential method. Under the sequential method, parties exercise their challenges without knowing the characteristics of all potential jurors. This method has the advantage of sometimes using fewer jurors because the parties risk replacement of the challenged juror with someone even more objectionable. However, this risk brings the method into disfavor with some. There are two widely used types of the sequential method:

1. **Individual method**. Under the individual method, the court examines potential jurors one at a time. Immediately after each examination, both parties must decide whether to accept the potential juror or issue either a challenge for cause or a peremptory challenge. If the parties accept the juror, the juror takes a seat in the jury box. If the parties do not accept the juror, the juror is either excused or returned to the panel for selection in another case.
2. **Group, or box, method.** Under the group, or box, method, the court seats potential jurors in the jury box and then examines them. The size of the group depends on whether the court uses alternates. Challenges for cause are exercised first; peremptory challenges are then exercised. Peremptory challenges are issued individually by the parties, and the challenged jurors are replaced until all peremptories are exhausted or both parties are satisfied with each member of the jury.

Administering the Final Oath

After both parties have exercised their challenges and the jury has been selected, the court must complete at least three tasks before the jury selection process is finished. First, the judge must verify with counsel that the jury is acceptable and have counsel state this affirmatively for the record.

Second, the judge must advise jurors to avoid reading or listening to news accounts of the case and discussing it with each other or with family and friends. With multiple voir dire, a judge typically provides supplementary instructions when the jury reassembles for the trial.

Third, when the trial begins, the judge or clerk must administer the final jury oath—a vow in which jurors swear, or affirm, that they will try the case fairly and render a true verdict. When the jury is selected the day of trial, the court administers the oath at the end of the selection process. For multiple voir dire juries in criminal cases, some courts administer the oath at the end of the selection process, and others administer it the day of the trial. Some courts that administer the final oath the day of trial do so because they believe the Fifth Amendment's double jeopardy provision attaches as soon as the oath is administered.

Impaneling Juries in High-Publicity Cases

High-publicity cases, such as those involving notorious crimes, highly publicized civil disputes, or well-known individuals, usually require special jury administration procedures. In these cases, judges often require a more diligent, encompassing examination of each prospective juror to determine biases, prejudices, or conflicts of interest. Also, a court may want to have a large number of prospective jurors in attendance if it anticipates that more persons than usual will seek excuses or be excluded. It is not uncommon, however, for judges and administrators to fear the worst when facing voir dire in high-publicity cases and call in many more prospective jurors than are necessary.

In high-publicity cases, courts frequently use several techniques to expedite the juror selection process and reduce the number of prospective jurors they call.

Prescreening Questionnaires

Questionnaires sent to prospective jurors well in advance of the jury selection date (usually with the summons) can elicit preliminary information. The court can review the information and, with the parties, make preliminary determinations, such as excusing categories of jurors that the parties agree are likely to be biased or prejudiced. If a trial is likely to be long, a questionnaire can screen out people who are unable to serve the necessary length of time. Even judges who do not excuse prospective jurors solely because of their responses to prescreening questionnaires save time because most of the information they need at voir dire is on the form.

Reviewing Data on Prior Trials

A court should maintain records on high-publicity cases. These records can include such data as panel size, the number of persons summoned compared with the number who served, use of prescreening questionnaires, length of voir dire, sequestration patterns[32] and reasons for challenges (e.g., publicity, expected length of trial, nature of case). Careful review of such records will often blunt the tendency to call in inordinately large numbers of jurors by showing that doing so has not been necessary in the past.

As a matter of policy, some courts do not schedule voir dire in other cases on the same day as voir dire in a high-publicity case. They follow this policy because of congestion in and around the jury assembly room and, in some cases, the greater need for security.

Staggering Prospective Jurors' Reporting In

Some courts stagger the times at which prospective jurors are to report to the court. This technique is particularly useful for judges who conduct an individual voir dire for each prospective juror and thus can see only a limited number of jurors in one day. Precise staggering times should reflect past patterns in the length of individual voir dires. A court should summon only the number of jurors it can use in one day, also based on past experience.

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32. Sequestration is the act of isolating jurors from contact with the general public during the course of a trial, usually a sensational, high-publicity trial.

Using a Separate Panel of Prospective Jurors

Using a panel that includes persons who have already been involved in the jury selection process may prompt charges that the panel is biased. Therefore, some judges prefer to use a separate panel in a high-publicity case; others prefer to select jurors who have had some experience.

7 Implementing Policies for Juror Comfort, Education, and Protection

The preceding chapters of this handbook have been primarily concerned with the essential steps of jury selection, such as creating qualified jury wheels and summoning jurors. Essential as these are, jurors are more likely to serve effectively if the court goes one step further and shows concern for their well-being. Thus, a court should implement policies regarding juror comfort, education, and protection.[33] Such policies should address the following matters:

- the mailing of preliminary information;
- transportation and parking;
- check-in procedures;
- juror facilities and amenities;
- orientation;
- deliberation rooms; and
- end-of-service forms and procedures.

On some of these matters, such as those affecting physical construction of the courthouse, jury staff can only make recommendations. On others, they can make improvements with nothing more than a little ingenuity.

Preliminary Information

Most prospective jurors know little about federal courts and jury service, and even less about specific matters such as where they should report and what is expected of them. To prevent confusion, jury staff should send them information sheets or booklets, either with the

33. Although much in this chapter is relevant to grand jurors, chapter 8 contains information specifically about grand juror orientation and facilities.

summonses or separately. The sheets or booklets should include information on the following:

- the exact location of the courthouse, including a map if necessary, stressing that prospective jurors should report to the federal courthouse, not the state court building;
- parking;
- public transportation;
- normal court hours;
- first-day activities;
- length of jury service;
- juror compensation;
- the record jurors will receive of their days of service for employers;
- suggested attire;
- restaurants and lodging;
- on-call procedures;
- hardship excuses and deferment procedures; and
- phone numbers to call.

In some courts, jury staff also send prospective jurors the *Handbook for Trial Jurors Serving in the United States District Courts*, or the *Handbook for Federal Grand Jurors*. These pamphlets, which the Administrative Office prepares under the auspices of the Judicial Conference Jury Committee, may be obtained free of charge from the Administrative Office printing center in Forestville, Maryland. If a juror is being summoned for a trial that could be prolonged, jury staff may want to send the juror a questionnaire to complete regarding his or her availability.

Transportation and Parking

Transportation

The Jury Selection and Service Act authorizes a court to reimburse jurors' transportation costs based on mileage. 28 U.S.C. § 1871(c)(1). If a juror must use public transportation for which the mileage allowance does not cover the actual cost, a court may, in its discretion, make up the difference. 28 U.S.C. § 1871(f). Administrative Office regulations

specifically prohibit reimbursement for taxis unless a court finds the use of one "essential."[34]

In most courts, the clerk calculates mileage and reimburses prospective jurors for transportation costs. Jury staff maintain current transportation schedules for buses, trains, and subways, and the telephone numbers of all local taxi companies (taking care to avoid the appearance of favoritism to any particular company).

Parking

A court can provide parking for jurors at government or privately owned lots. Several arrangements are possible. A court could rent or lease parking spaces through the Government Services Administration (GSA). It could also make arrangements with the owners of private lots, such as contracts or billing on a periodic basis for space jurors use.

A court could also make an arrangement with municipal authorities to permit jurors to park in metered spaces for longer periods than customarily allowed. Some municipal authorities give the court free parking permits to issue to jurors; others let jury staff validate jurors' parking tickets.

Another alternative is for a court to reimburse jurors for parking expenses upon submission of a receipt (or signed certificate detailing the amount of the expense if a receipt is not available).

The General Counsel's Office at the Administrative Office has held that except in extraordinary circumstances, a court may not reimburse jurors for parking fines incurred during jury service. Thus, a court should be sure to give jurors comprehensive instructions on where they may lawfully park during a full day of service.

Check-In Procedures

A court can make physical arrangements that will ease the prospective jurors' arrival at the courthouse. The following are examples of such arrangements:

- having an easily accessible and clearly marked check-in area with directions to it at all entrances;

34. Administrative Office of the U.S. Courts, I-A Guide to Judiciary Policies and Procedures, ch. V, pt. B, ¶ 3.3, pp. 10–11 (Aug. 24, 1987).

- providing tables and chairs with pens and calendars for the prospective jurors' use while completing forms;
- ensuring direct access, insofar as possible, to the jury assembly room or lounge from the check-in area; and
- placing the jury staff's office near the check-in point and using it solely for jury matters.

Identifying No-Shows

During check-in, a court must identify persons who did not respond to its summonses to report for jury service. If the total number of prospective jurors a court has summoned is small, it may require them to check in with the jury clerk. Or it may have the jury staff call names from the list of summonses mailed and mark those who are present. With either procedure, unmarked names indicate absent jurors.

With a large number of jurors, a court also has at least two ways of identifying no-shows. First, the jury clerk may collect the prospective jurors' copies of their summonses (which they are required to bring to court) and check them against the list of summonses mailed. Again, unmarked names indicate absent jurors. If a prospective juror has not brought his or her summons, some courts request another form of identification (with a photograph).

Second, the jury clerk may place a name card (used in the courtroom for the selection of the panel) for each summoned juror in alphabetical order on a table near the entrance to the jury assembly room or in the courtroom. The clerk then instructs prospective jurors to pick up their name cards; the remaining cards identify persons who failed to report.

Handling Hardship Excuses

During check-in, persons claiming they cannot serve that day may discuss their problem with the judge or the clerk. If there are problems the judge must handle, the clerk may defer them until the actual voir dire. Jury staff may handle such matters as determining which jurors may be entitled to any subsistence allowance for overnight stays. It should be noted that the qualification questionnaire states that a person who reports only to request an excuse will not be paid if the excuse is granted.

Juror Facilities and Amenities

In most courts, the jury staff's job includes helping to ensure that the facilities and amenities for jurors are practical and comfortable. Jury staff should become familiar with their court's process for purchasing items, including who has the authority to purchase particular items and which purchases require prior approval. Familiarity with Administrative Office forms is also important.

Juror Identification

Some courts have jurors wear badges or identification cards to help avoid inadvertent contact with lawyers, litigants, and other nonjurors. Although such identification may make jurors targets for inappropriate media exposure, most courts think the benefits of identification outweigh the possible problems. A court may purchase badges or cards as a "consumable supplies" budget item or by submitting an AO Form 19 to the Administrative Office.

Jury Assembly Room or Lounge

Although their space needs vary, each court has a jury assembly room or lounge, which should conform to space guidelines published by the Administrative Office. Some courts use their assembly rooms only for initial reporting; others use them as the jurors' lounge, where jurors either remain or return to await another panel call.

Most courts try to make assembly rooms and other places where jurors spend time as comfortable and functional as possible. The following are usually included:

- designated smoking areas, with air cleaners;
- furniture, such as couches, chairs, coffee tables, magazine racks, and coat trees (which a court may purchase through its furniture and furnishing budget and should inspect periodically);
- public telephones; and
- magazines and newspapers (either obtained free of charge from the Post Office's undeliverable mail, or purchased through local sources or by authorization from the Administrative Office).

A court should consider having such items as playing cards, games, and books in the assembly room. Courts that have jurors wait

for panel assignments may purchase televisions. These courts may also leave videocassette recorders in the assembly room when they do not need the recorders for training. A court may purchase equipment and other items or materials necessary for jurors' comfort and convenience by submitting an AO Form 19 to the Administrative Office.

The jury assembly room must have adequate lighting, heating, and cooling, and be kept clean. In most courts, jury staff have responsibility for ensuring that the GSA or its designated contractor provides these services. There must also be water fountains and separate rest rooms for men and women in or near the assembly room.

Whenever a problem arises because of a significant lack of space, most administrators have the jury staff document the problem and report it to them.

Other Amenities

A court may purchase refreshments, such as coffee, tea, doughnuts, and cold drinks, for jurors out of funds appropriated for jury use. It can also arrange with the building manager to have vending machines installed.

Increasingly, courts are providing refrigerators for jurors to use. A court may purchase one by submitting an AO Form 19 to the Administrative Office or may be able to obtain a surplus refrigerator from a military installation within its district.

It is important that there be access ramps into the courthouse and proper facilities for the handicapped in the parking area, elevators, rest rooms, assembly rooms, lounges, deliberation rooms, jury boxes, and grand jury rooms.

In some courts, jury staff keep a list of suitable hotels and restaurants for jurors not familiar with the area around the courthouse. They often send a copy of it with the preliminary information sheets and booklets. Jury staff can also find out whether hotels that have special rates for government employees extend them to jurors, and, if so, note this on the list. They can provide jurors entitled to a subsistence allowance with details on the rate of reimbursement in the court's particular area, as certified by the GSA.

Juror Safety

It is important that all courts take safety precautions in the jury assembly room and other areas in which jurors congregate. Such precautions include the following:

- signs with clearly marked fire and emergency exit routes, visible from any part of the room or area (the clerk should seek GSA assistance as necessary to ensure fire safety in the area);
- fire extinguishers and fire alarms;
- alarm or emergency phone to the marshal or the building police;
- basic first aid supplies; and
- training in emergency first aid for jury staff, including cardiopulmonary resuscitation (CPR).

In lengthy trials, jury staff may ask each juror for the name, address, and daytime phone number of a contact person in case of an emergency. In high-risk areas, a court may arrange to have a deputy marshal or other court personnel escort jurors to their vehicles, a bus, or the subway station.

Orientation

In addition to sending jurors preliminary information with their summonses, most courts give a detailed orientation to jurors when they report for service. A judge, the clerk, or jury staff can conduct the orientation; many courts also use films or videotapes.

Basic Orientation Material

The orientation usually covers the following:

- the jury as an institution;
- proper juror conduct, including the need to avoid improper sources of information;
- the jury selection process, including the voir dire;
- the jurors' term of service and the possibility of an extension if the trial is long;
- differences between petit and grand jurors, civil and criminal cases, and jury and judge functions;

- how a trial is conducted;
- trial cancellations; and
- employment protection features of the Jury Selection and Service Act (28 U.S.C. § 1875).

Most judges also give impaneled jurors information on the specific trial at hand. Some courts ask the local bar for comments on the information to be covered in the orientation.

Films and Videos

At least two types of media presentations are available for petit juror orientation. *And Justice for All*, a 24-minute orientation film for petit jurors, dramatizes important elements of jury service and was sanctioned by the former Jury Committee of the Judicial Conference.[35]

Some chief judges videotape their own orientation remarks, which a court can show in addition to, or instead of, *And Justice for All*. Videotaped remarks save the judges' time and ensure that all jurors receive a consistent message. They also prevent courts from having to schedule a separate and expensive orientation day at which the chief judge speaks in person to the jury panel.

The Federal Judicial Center's Division of Special Educational Services will produce such a videotape for any judge who is in Washington, D.C., on other business. For more information, contact the Division.

Scheduling the Orientation

Most courts conduct orientation for jurors before voir dire on their first day of actual service. Although court personnel are usually busy on voir dire days, showing films or videos allows them to use their time more efficiently than a completely live orientation would. Using techniques such as bunching in multi-judge courts also helps (see pages 47–48). However, calling all qualified jurors to the courthouse for the orientation at the start of a jury term when few, or no, voir dires are scheduled often creates resentment and wastes taxpayer dollars.

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35. Courts may purchase a copy of the film by sending a purchase order to: Post Script, 34773 Seven Mile Road, Livonia, MI 48152, Attn.: Shelby Newhouse. Telephone: (313) 477-6812.

Deliberation Rooms

The jury must have a separate and private room adjacent to the courtroom where it can discuss the case and try to reach a verdict.[36] This deliberation room should

- be well ventilated, adequately lighted, and kept at a comfortable temperature;
- be large enough to accommodate a conference table for at least 15 chairs and allow freedom of movement;
- have clothing racks, hangers, closets, and storage space for safeguarding jurors' belongings and supplies;
- have a water fountain;
- have separate rest rooms for men and women inside or immediately adjacent to it;
- contain supplies for any note taking that the court permits (and storage space to safeguard notes); and
- have supplies for refreshments, such as coffee, tea, soft drinks, and doughnuts, which can be provided through appropriated funds.

If, as is the trend, a court designates its deliberation rooms nonsmoking, it should make some provision for the needs of smokers. In addition, a buzzer or other means of communicating with the court should be provided to allow a deliberating jury to ask the court questions or notify the marshal when it has reached a verdict.

End of Service Forms and Procedures

Jury staff should make certain that the jurors' departure from the courthouse is as pleasant as possible. They should thank jurors for their attendance and provide information on tax aspects of jury service. They may also want to provide exit questionnaires.

Certificate of Appreciation

Some courts provide certificates of appreciation to all jurors to thank them for their service. Others issue such certificates selectively

36. See chapter 8 for information on grand jury rooms.

(e.g, to grand jurors and to petit jurors in long trials). These certificates are available through the Administrative Office.

Tax Aspects of Jury Service

Fees paid to jurors are taxable. Some courts use a rubber stamp on the pay vouchers to alert jurors to save them for tax purposes. A court must send a Form 1099 to jurors who receive more than $600. The Internal Revenue Service gives reporting instructions in the instructions to Form 1040, sent to all taxpayers.

Exit Questionnaire

The exit questionnaire, discussed in chapter 9, asks jurors for their perceptions of their jury service and how the court treated them. In addition to showing jurors the court's interest in their concerns and well-being, it gives the court information on how it can improve the jury selection process.

8 Administering Grand Juries

Most of the concepts and procedures regarding petit jury selection also apply to grand jury selection. A court must use jury wheels to summon grand jurors, and it must impanel grand jurors and implement policies regarding grand juror comfort, education, and protection. It should strive to use grand jurors as efficiently as possible.[37]

However, there are differences between grand juries and petit juries, and the purpose of this chapter is to point them out and discuss how they affect jury selection. The following topics are addressed:

- types of grand juries and terms of service;
- summoning grand jurors;
- grand jury selection;
- chief judge's role;
- orientation;
- grand jury rooms; and
- effective utilization of grand juries.

The district court and the U.S. Attorney's Office both have responsibilities for grand juries. As it does with petit juries, the district court has responsibility for administering the grand jury—its selection and orientation, the judge's instructions to the grand jury, excuses, and the grand jurors' physical comfort. However, the U.S. Attorney's Office has responsibility for the grand jury's legal work—hearing evidence and deciding whether to issue indictments.

Types of Grand Juries and Terms of Service

Courts use two types of grand juries: regular and special.

37. Parts of this chapter are drawn heavily from *Do-It-Yourself Kit for Improving Grand Juror Utilization and Morale* (1984), prepared by and available from the Clerk's Office, U.S. District Court for the District of Columbia.

Regular Grand Juries

A regular grand jury meets in secret and listens to evidence presented by a U.S. Attorney. Its job is to determine whether there is "probable cause" to charge a person with a specific crime. If so, it issues a formal charge, known as an "indictment."

A court summons regular grand juries "as the public interest requires," which means, in effect, as U.S. Attorneys need them to consider evidence of crimes. Fed. R. Crim. P. 6(a). The term of service is no longer than 18 months, unless a court finds that an extension would be in the "public interest." Then, it may extend the term for no longer than an additional six months. Fed. R. Crim. P. 6(g). Many courts, however, are reducing the length of terms to reduce the hardship on jurors.

A regular grand jury normally has 23 members, although 16 constitute a quorum. 18 U.S.C. § 3321; Fed. R. Crim. P. 6(a)(1).

Special Grand Juries

A special grand jury meets to study the overall pattern of criminal activity in a district. It generally serves as an advisory body, usually has greater discretion than a regular grand jury, and may submit a report on organized crime or the misconduct of public officials.

If a district has more than 4 million people, a court must convene a special grand jury at least once every 18 months. 18 U.S.C. § 3331(a). It must also convene one if the U.S. Attorney General or his or her top assistants certify, in writing, that a special grand jury is necessary. 18 U.S.C. § 3331(a). The term of service is 18 months, and a court can extend it for three additional 6-month periods. Such extensions could lead to a total of 36 months of service. 18 U.S.C. §§ 3331(a), 3333(e).

As do regular grand juries, a special grand jury normally has 23 members, although 16 constitute a quorum.

Summoning Grand Jurors

Impanelment Orders

The court order to impanel a grand jury is similar to orders used for petit juries. Signed by a judge but usually prepared by jury staff, the

order should state

- that it derives its authority from the jury plan;
- that its purpose is to impanel a grand jury;
- when and where the public drawing for jurors will be held;
- the number of names the court will draw; and
- when the jury term begins.

If applicable, the order may also state that the court will place the names of persons not selected as grand jurors into the petit juror pool.

After the judge signs the order, a court must draw names at random from the qualified wheel, mail summonses, and verify that persons are available to serve as jurors on a specific date. In performing these tasks, almost all courts follow the same procedures they use for petit juries.

Sources and Selection of Names

Most courts use the same master and qualified jury wheels for selecting names of persons for both petit and grand juries. According to the Jury Selection and Service Act, the requirements for these wheels are the same for both types of juries. 28 U.S.C. § 1863(a).

A court may select grand jurors from its entire district or from the qualified wheel of one division (and still issue indictments for its entire district). Selecting jurors from one division minimizes lengthy trials and other inconveniences that arise when a court summons grand jurors from a large geographic area. However, a court that always selects jurors from the same division will deprive citizens in other parts of the district of the opportunity to serve. Therefore, some courts vary the division from which they select grand jurors or occasionally select grand jurors from the entire district.

A court that selects grand jurors from its entire district typically puts names from each division's wheel into a single grand jury pool. Then it draws names from each division in proportion to the number of names on the division's source list. For example, assume a court has a total of 800,000 names on the source lists for its entire district, and it wants to select 80 grand jurors from four divisions. These divisions have different numbers of names on their source lists. The court would divide the number of names on the source lists for each division by 800,000 to obtain a quotient number. The quotient number tells the court what percentage each division has of the total number of names

on the source lists for the entire district. As the chart below shows, the quotient number for Division 1 in our example, which has 300,000 names on its source lists, is 37.5.

The court would then divide the quotient number for each division by 100 and multiply the resulting quotient number by the total number of jurors it needs to summon. The product of the calculations for each division would be the number of potential grand jurors the court needs to summon from that division. In our example, for Division 1, the court would divide 37.5 by 100 to obtain a second quotient number of .375, then it would multiply .375 by 80 to arrive at a product of 30. Thirty is the number of potential grand jurors the court needs to summon from Division 1.

Determining the Number of Grand Jurors to Summon

	No. on Source Lists	% of Total	Calculation	No. of Potential Grand Jurors to Summon
Division 1	300,000	37.5	.375 (37.5 ÷ 100) x 80	30
Division 2	250,000	31.3	.313 (31.3 ÷ 100) x 80	25
Division 3	100,000	12.5	.125 (12.5 ÷ 100) x 80	10
Division 4	150,000	18.8	.188 (18.8 ÷ 100) x 80	15
District	800,000			

Number of Summonses to Issue

Many factors will affect the number of persons a court must summon to obtain a grand jury panel with 23 members. These factors include length of the term of service, frequency of meetings (which influences the number of excuses), and time of year (e.g., more people will be vacationing during the summer). Generally, the same factors that guide petit jury yield calculations should guide grand jury yield calculations.

Supplemental Questionnaire Information

Many courts mail with their summonses, or their summonses contain, a copy of AO Form 229 so that jurors can update information provided on the qualification questionnaires. In addition, jury staff

may require the computer center to print specific instructions on the face of the summonses, such as the telephone number for the court's automatic answering device.

Informational Materials

As they do for petit jurors, jury staff can mail grand jurors preliminary information that will help resolve misconceptions and apprehensions about jury service. The information can be sent with the summonses or when persons respond and indicate that they are able to serve as grand jurors. This information can include the following:

- length of service;
- differences between petit jury and grand jury service;
- directions to the courthouse, including a map;
- transportation and parking;
- lodging and restaurants; and
- how to use the court's automatic answering device.

Many courts also send the *Handbook for Federal Grand Jurors*. This pamphlet is available, free of charge, from the Administrative Office printing center in Forestville, Maryland.

Selection of the Grand Jury

After a court has mailed summonses and disqualified and excused persons from service, it must have at least 23 persons to convene a grand jury. If it does not, the court must order that other jurors be summoned.

Most courts, however, have more than 23 persons and must decide what to do with the extra jurors There are at least two approaches such a court can take. Assume that a court summoned 50 prospective jurors to yield the 23 it needed. It would indicate on each summons that the person had been selected for service as a grand juror and the date the term of service started. Then, the court could proceed in one of two ways:

1. It could select 25 or 26 persons at random from those remaining after disqualifications and excuses, and have them report at a specific location and time. The two or three extra persons would provide a safety margin for "no shows."

2. It could have all persons whom it did not disqualify or excuse report to the courthouse for another screening. The judge, the clerk, or jury staff could conduct the screening according to factors determined by the court pursuant to statute. The jury staff could then select, at random, 23 grand jurors from those who remained after the in-court screening. Some courts place persons not selected as grand jurors in the petit jury pool.

The second approach is likely to provide more jurors who are responsible and willing to serve for the entire duration of the grand jury's term of service. However, it inconveniences a larger number of citizens and incurs the additional costs of their attendance fees, mileage, and per diem expenses.

Chief Judge's Role

Although it is not mandated by statute, in many courts, chief district judges assume responsibility for grand jury management, instructions, and orientation. Other courts delegate grand jury management to another judge, and still others rotate it among the judges. Responsibilities include appointing a foreperson and a deputy foreperson and administering grand jury charges.

Appointment of a Foreperson and a Deputy

The foreperson is a member of the grand jury who administers oaths, signs indictments, and either keeps or designates someone else to keep a record of the jury's votes on the indictments offered to it. The deputy foreperson assists the foreperson and assumes the foreperson's responsibilities if the foreperson is absent.

By law, the judge appoints the foreperson and the deputy, although in some courts, the judge may appoint persons chosen at random, from volunteers, or chosen by the grand jurors. There have been occasional legal challenges to foreperson selection, usually charging the systematic exclusion of minorities and women.

Grand Jury Charge

The judge administers the charge to the grand jury; that is, he or she gives the grand jury instructions regarding its duties. After the charge, the members take their oath. Some judges also issue prelimi-

nary instructions to prospective grand jurors when they are called in for the selection process. This preliminary information, about the nature of grand jury service, may eliminate some requests for excuses.

Orientation

An orientation for prospective grand jurors is generally more extensive than an orientation for prospective petit jurors. In addition to the information on orientation mentioned in chapter 7, a court must cover administrative matters arising from the grand jurors' longer term of service and the role of the U.S. Attorney. Some courts use a "coordinated orientation," given by a judge or staff member representing the court and a representative of the U.S. Attorney's Office. Many courts designate an employee of the clerk's office to perform grand jury orientation.

Sometime during the orientation, jury staff should

- discuss check-in procedures;
- distribute written materials;
- attend to details regarding excuses, attendance, and attendance certificates; and
- answer any questions, including those regarding contacting the automatic answering device, available courthouse facilities, parking or lodging arrangements, and nearby restaurants.

The court may want to give grand jurors a copy of the *Handbook for Federal Grand Jurors* if it has not already done so. It may also want to show a 30-minute program, *The Federal Grand Jury: The People's Panel*, which is available on film or videotape and which the Judicial Conference recommends. This program can be purchased using the court's consumable supply allocation.[38]

After the orientation, the judge charges and swears in the grand jury. Some courts have found it useful for the judge to meet with the grand jurors informally before they begin service, perhaps in the grand jury room, to discuss their role and to answer legal questions.

Once the foreperson and deputy foreperson have been selected and the grand jury is charged, the Assistant U.S. Attorney usually com-

38. It can be purchased on videotape from Mary Warren, V.C.I., 915 Hollywood Way, Burbank, CA 91505, or on film from Norman Carpenter, MGM Laboratories, 10202 West Washington Blvd., Culver City, CA 90230.

pletes the orientation by detailing that particular grand jury's duties. After the grand jury is released to the Assistant U.S. Attorney, the responsibilities of jury staff are, in most courts, essentially administrative.

Grand Jury Rooms

The grand jury room must be large enough to accommodate 23 grand jurors, a court reporter, U.S. Attorney staff, and witnesses. It should be in a setting that allows the court to preserve the secrecy of the proceedings. Chair, table, and desk arrangements should allow all grand jurors to see and hear witnesses. Witnesses should be able to wait, and to enter and leave the grand jury room, without being seen by the general public. Examples of how courts have arranged their grand jury rooms may be obtained from the Court Programs Branch of the Court Administrative Division of the Administrative Office of the U.S. Courts.

To preserve secrecy, a court should station the deputy marshal in a place that allows him or her to control access to the grand jury and waiting rooms. Jury staff should conduct periodic security checks for unsafeguarded grand jury materials. They should also ask appropriate federal agencies to conduct periodic electronic sweeps of the grand jury facilities for microphones or other transmitting equipment. Jury staff should also make records of the requests for, dates of, and results of such sweeps.

A court may provide coffee, tea, and other refreshments for the grand jury while it is in session. Such items can be purchased using appropriated funds.

Utilization

For the district court, the biggest difference between grand juries and petit juries is sharing responsibility with the U.S. Attorney's Office. To use grand juries effectively, a court must work closely with the U.S. Attorney's Office and with jurors.

In addition, a court's jury use will suffer if the U.S. Attorney's Office does not coordinate its grand jury work with the court. Assistant U.S. Attorneys may seek to have grand juries impaneled, unaware that juries already sitting can meet their needs. At times, there may also be poor coordination between the U.S. Attorney's Office and the Department of Justice.

Despite the lack of total control over grand juries, a court can take steps to promote effective jury use. The court can designate a grand jury coordinator; ask the U.S. Attorney's Office to designate a contact person; establish procedures for communicating with the grand jury; and predict, establish, and monitor grand jury use.

Grand Jury Coordinators

A court can designate a member of its jury staff to be a grand jury coordinator. The coordinator's responsibilities can include notifying the clerk of tardy or absent jurors, excuse requests, quorum problems, and poor use of time by the U.S. Attorney's Office—in general, all matters not pertaining to the grand jurors' legal responsibilities.

U.S. Attorney Contact Person

A court can ask the U.S. Attorney to designate a contact person in his or her office to work with jury staff. The U.S. Attorney's Office must define the contact person's role in specific functions and tasks, and delegate authority needed to ensure compliance. The written designation should be given to all attorneys appearing before or using grand juries.

A separate, internal document should spell out the specific grand jury management responsibilities of the court and the U.S. Attorney.

Procedures for Communicating with the Grand Jury

The court should make sure that the foreperson and deputy understand the grand jury's relation to the court and the U.S. Attorney. The grand jury answers to the U.S. Attorney on legal matters; administrative matters are under the court's jurisdiction. Thus, the foreperson and deputy should alert the judge or jury staff to problems with attendance, scheduling, excuses, delays, conditions of the jury room, and use of the automatic answering device.

At the beginning of a grand jury's term of service, jury staff may wish to set a regular time for meeting with the jurors (all of the jurors, the foreperson, or the foreperson and the deputy). The meeting can be spent answering questions, and discussing problems and suggestions. If, as in some courts, either the foreperson or the deputy turns in the jury attendance forms, that occasion can be used for these discussions—a point jury staff should specifically make to the grand jurors.

Jury staff can also learn of jurors' concerns and suggestions by periodically phoning them or asking them to fill out questionnaires. Staff must be certain, however, that the object of the grand jury investigation does not become known.

Predicting Grand Jury Use

In some courts, the judge, jury staff, and U.S. Attorney meet at least once a year to try to predict how many grand juries will be needed in the upcoming year, or term. They try to learn how much work there will be for grand juries and choose the number they will need.

Establishing and Monitoring Grand Jury Use

The court should establish the number of hours of testimony per day that represents an effective use of grand jurors' time. As a general rule, the Judicial Conference recommends that a grand jury session be scheduled only if there are six hours of business planned. This time may vary, however, and the court should also define circumstances under which fewer hours may be scheduled.

In establishing the number of hours of testimony, the court can use the data it must provide to the Administrative Office on AO Form JS-11GS. The form, discussed in chapter 9, asks for such information as how often a grand jury is convened, how many hours it sits, and how often it is idle. If review of JS-11GS forms indicates that grand juries are not being used efficiently, the court should bring this to the attention of the contact person.

In addition to AO Form JS-11GS, other sources of information are the following:

- supplemental forms on which the foreperson or deputy records the actual use of grand jurors' time (rather than the "number of hours in session" recorded on the JS-11GS form);
- data comparing the actual use of grand juries with data from the U.S. Attorney's Office showing scheduled activity;
- a compilation of reasons grand jurors are summoned and then not used;
- records of Assistant U.S. Attorneys who repeatedly schedule grand jury time and do not use it;
- exit questionnaires; and

- informal communication between jury staff and grand jurors.

Systematic review of such information may enable jury staff to correct problems as they occur, and avoid or minimize them in the future. For example, the data may suggest

- more effective ways of using the automatic answering device when last-minute changes delay convening the grand jury for several days;
- recommendations to the U.S. Attorney on consolidating three partial days of service into a day and a half; or
- that Assistant U.S. Attorneys be held strictly accountable for their scheduling and actual use of grand juries' time.

Although jury staff have primary responsibility for monitoring grand jury use, they should try to involve the judge and should suggest improvements. For example, jury staff may send copies of AO Form JS-11GS to the judge with a memo noting problems pertaining to a particular grand jury.

In suggesting changes, jury staff should indicate whether they can be made internally or require coordination with the U.S. Attorney's Office. In the latter case, jury staff should also ask whether they should deal directly with the U.S. Attorney or speak through the clerk of court. Even if jury staff have the authority to deal directly with the U.S. Attorney, it is a good idea for them to obtain prior approval of the clerk and, in some matters, the court.

9 Maintaining Jury Selection Records and Information

This chapter discusses how courts maintain information and records regarding jury selection. Good records can help a court summon only the number of jurors it needs and make jurors' service as pleasant as possible. The three basic categories of records are

1. jury selection records, which should be retained and disposed of according to the Jury Selection and Service Act and Administrative Office regulations;
2. statistics that the Administrative Office uses to compile information on juror utilization nationwide and for each district court; and
3. information that a court uses internally to ensure that its jury selection system is efficient.

Data can fall into more than one category and are often interrelated. Thus, a court should take each category into account when planning jury administration data analysis or records retention.

In most courts, jury staff have primary responsibility for collecting data and preparing preliminary reports. Clerks review the reports to ensure accuracy and present them, along with suggestions for improvement, to judges.

Jury Selection Records

A court must retain jury selection records in case a litigant challenges a proceeding on grounds of improper jury selection. The litigant might charge that the court failed to meet the Act's policy requirement of selecting juries at random and without regard to race, color, religion, sex, national origin, or economic status. Jury selection records would help establish the validity of the litigant's challenge and the court's response.

What to Retain

According to the Act, a court must preserve all "records and papers" pertaining to its master jury wheel. 28 U.S.C. § 1868. Administrative Office regulations define the records to be retained as "all records and papers compiled and maintained by the jury commission or clerk for the purpose of filling and maintaining the master and qualified jury wheels."[39] At a minimum, the following records should be retained.

- court orders for refilling the master and qualified jury wheels and summoning grand and petit jurors;
- court orders regarding disqualifications, exemptions, and excuses;
- data on jury questionnaires, including the numbers mailed, returned, and properly and improperly completed;
- qualification questionnaires, including those returned undelivered; and
- Administrative Office reports, including AO Forms JS-11, JS-11G, JS-11GS, and JS-12 (discussed in the next section).

However, a court should not retain information pertaining to grand jury proceedings, including recordings, notes, or transcripts of proceedings. Federal Rule of Criminal Procedure 6(e)(1) gives the U.S. Attorney custody of these materials unless the court orders otherwise in a particular case.

Retention Period

The clerk of court must preserve the records and papers pertaining to a master jury wheel for at least four years. 28 U.S.C. § 1868. The four-year period begins after a court has emptied and refilled its master wheel and all persons selected as jurors from that wheel have completed their service. At its discretion, a court may order the clerk to preserve records for longer than four years.

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39. Administrative Office of the U.S. Courts, I-A Guide to Judiciary Policies and Procedures, ch. IV, pt. A, p. 40 (Mar. 27, 1986).

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Public Inspection

In order to challenge a master wheel's validity, the parties in a case can "inspect, reproduce, and copy" papers and records pertaining to a master wheel currently in use. 28 U.S.C. § 1867(f). Depending on a court's jury plan, all or part of these records may either be open to the public or require a court order for inspection. 28 U.S.C. §§ 1863(b)(7), 1867(f). Jury staff should learn their court's policy on public inspection of records by looking at the plan and speaking with the clerk.

Disposal

A clerk can choose how to dispose of jury selection records at the end of the retention period. The only requirement is that the information not become available to the general public. The clerk should also prepare a memorandum that identifies the types and numbers of records he or she has disposed of. The clerk should not transfer these records to a Federal Records Center.[40]

Data for the Administrative Office

Each court must provide the Administrative Office with data it can use to compile information on juror utilization nationwide and for each district court. The Administrative Office requires the court to use four standard forms, which elicit different types of information: AO Forms JS-11, JS-11G, JS-11GS, and JS-12.[41]

AO Form JS-11

AO Form JS-11 gives the Administrative Office basic information on the administration of each court's jury system, such as jurors present for voir dire examination or orientation. The Administrative Office uses this information to compute statistics showing the percentage of jurors who were not selected, who served, and who were challenged on the first day of service. It then publishes these figures in an annual

40. Administrative Office of the U.S. Courts, I-A Guide to Judiciary Policies and Procedures, ch. IV, pt. A, p. 40 (Mar. 27, 1986).

41. See XI Guide to Judiciary Policies and Procedures, ch. 4, for instructions on completing the JS-11 and ch. 5 for the JS-11GS.

report, *Grand and Petit Juror Service in United States District Courts.* Jury staff can also use the data required for completion of AO Form JS-11 to develop a detailed picture of juror utilization in the court.

Courts have developed numerous ways to ensure that the data they need for AO Form JS-11, which they must submit monthly, are readily available. For example, in some courts, courtroom deputies, using uniform abbreviations, supply information to jury staff about the use of each juror on the panel lists during voir dire. At the end of the day, jury staff check with the deputy to ensure that they have all the individual panel lists for that day. They then copy each juror's status after voir dire (e.g., selected, challenged, not used) on the master list of the jurors who attended court that day. After copying the data onto the master list, they simply transfer them to the JS-11 form and compute the JS-11 statistics for the day.

Ensuring that the data necessary to complete AO Form JS-11 are available can be done in many other ways. Regardless of the method, however, accurately completing the JS-11 form requires close coordination and communication between jury staff and the courtroom deputies serving the voir dire for each panel.

AO Forms JS-11G and JS-11GS

A court must submit AO Form JS-11G or AO Form JS-11GS to the Administrative Office every month. The JS-11G form provides information on each grand jury that sat during the month and the number of hours each was in session. The JS-11GS form contains similar information but is a summary for as many as five grand juries.

AO Form JS-12

AO Form JS-12 provides data on the racial composition of the master wheel. Although Administrative Office regulations do not require a court to submit these data, clerks must collect them.

Administrative Office policy requires the clerk to survey a minimum of 300 qualification questionnaires on which the recipients answered the question on race (Question 10) within six months of refilling the master wheel. Because some persons do not answer Question 10, clerks often survey more than the 300 minimum to ensure an acceptable sample.

Information for the Court's Internal Use

In addition to records that the Act and the Administrative Office require, courts often keep internal records, which also help ensure that they use jurors efficiently. A source of data for the internal records can be the information required by the Act and the Administrative Office. Data can also come from records relating to the master and qualified jury wheels, summoning jurors, and selecting juries.

Data Analysis

Whatever the source, jury staff can use the data to analyze a court's jury administration process, and the analysis can form the basis for recommendations for innovations. For example, a court may be uncertain whether it has a sufficient number of minority persons on its jury panels. Jury staff could periodically check the court's statistical data to find out how many minority persons are summoned and how many serve as jurors. If the numbers seem low, jury staff may want to recommend that the court expand the base of its source lists.

Jury staff could also prepare a report of each judge's juror use for a specific period to give the judges feedback on how efficiently they are using the jury selection process. This information may persuade a judge who routinely requests more jurors than are needed to reduce the panel size he or she requests. If the report is distributed court-wide, the court can compare the juror utilization rates of its judges.

Jury staff can gather other types of data, depending on a court's perceived problems. The following are examples of such data:

- how many persons return qualification questionnaires;
- how many of the people who return qualification questionnaires qualify for jury service;
- how many cases settle at the last minute, after a court has told jurors to report for jury selection;
- how many prospective jurors called for voir dire are not selected and how many are challenged and whether these figures vary depending on whether the case is a high-publicity suit, involving famous people or events; and
- how long different types of jury trials last.

Using such information to identify and document trouble spots in a court's jury selection system is the first step toward improvement; it

requires creativity, consultation with the clerk, and a good understanding of the jury system. However, information analysis is not always easy and can be tedious. Thus, before beginning, jury staff should clearly state the reason for it and carefully plan its execution—or risk few results from much labor.

Jury Exit Questionnaire

Many courts ask jurors to complete a jury exit questionnaire at the end of their service. This questionnaire allows jurors to give the court their perceptions of jury service and the court's treatment of them. The data often indicate areas of needed improvement not discernible from other sources.

The most helpful exit questionnaires require yes or no responses, or responses along an agree–disagree scale. Jurors often do not know enough to answer open-ended questions. For example, a questionnaire that asks "What should the term of service be?" presumes that jurors know what "term of service" means and what alternatives are available.

If prospective jurors report each day, they can receive the exit questionnaire on their last day of service. However, as courts increasingly have jurors report only when needed, it is often impossible to know when a juror's last day in the courthouse will be. Therefore, some courts hand out exit questionnaires in self-addressed stamped envelopes at the beginning of the term and ask jurors to return them after completing their service.

Courts that use exit questionnaires find little value in tabulating more than 200 responses in any single term of service. This number appears to provide an adequate measure of jurors' opinions of their service and conserves a court's effort.

Glossary

Administrative Office of the United States Courts: The staff arm of the Judicial Conference of the United States; it implements the Judicial Conference's policies.

alternate juror: A person who sits on the jury during a trial, but does not participate in the deliberations unless one of the other jurors cannot continue because of illness or some other compelling reason.

appropriations: Money allotted by Congress for a specific purpose.

Assistant U.S. Attorney: *See* **U.S. Attorney.**

automatic answering device: A device that attaches to a telephone and plays a prerecorded message when the telephone number is called.

back-up trial: A trial that begins when a previous trial is cancelled, settles, or ends sooner than anticipated.

bench trial: A trial without a jury.

blind draw: A method of drawing names at random from the source lists, the master jury wheel, or the qualified jury wheel from a drum or box. This can also be done by computer.

box method: *See* **group method.**

bunching: A method of jury selection in which trial starts and jury selection are limited to a particular day or days of the week or a particular week or weeks in a month.

certificate of appreciation: A certificate that courts give jurors to thank them for their service.

challenge: A request by an attorney during the voir dire examination that a particular juror not be selected to serve in that case. *See also* **challenge for cause** and **peremptory challenge.**

challenge for cause: A request by an attorney that a person not be allowed to serve as a juror in a case because of a specific reason that prevents the person from rendering an impartial verdict, such as a personal relationship with a party or victim.

chief district judge: The judge who has responsibility for overseeing a court's administration and serves as a liaison between the court and the judiciary or the general public.

circuit court: A federal appeals court.

circuit judicial council: *See* **judicial council.**

clerk of court: The court officer to whom the court or chief judge assigns those administrative duties that are delegable, such as managing the court's jury selection system.

combination term: A term of jury service that requires a person to contact the court a specific number of times, serve in a specific number of trials, or report to the court in person a specific number of times, whichever is completed first.

courtroom deputy: A deputy clerk assigned to assist a judge in calendar control and calendar management.

deliberation room: A separate and private room adjacent to a courtroom where a jury discusses a case and tries to reach a verdict.

deliberations: The discussion among members of a jury when trying to reach a verdict.

disqualification: The Jury Selection and Service Act's requirement that a court not allow a person to serve as a juror if he or she does not meet eight qualification requirements.

district: *See* **judicial districts.**

district court: A federal court with general trial jurisdiction.

division: A geographical area within a judicial district, established either by statute or for jury purposes.

double jeopardy: Trying a person twice for substantially the same crime, which is prohibited by the Fifth Amendment to the U.S. Constitution.

driver's license list: A list of persons who hold a driver's license. A court can use this list to create or supplement its master jury wheel if voter lists are not likely to yield jurors from a fair cross section of the community.

emptying and refilling: Discontinuing the use of one master or qualified jury wheel and drawing another at random.

exclusion: A court's ability to prohibit a juror from serving in a trial because he or she is unable to render impartial jury service, or his or her presence as a juror would be disruptive, would be likely to threaten the secrecy of court proceedings, or would otherwise adversely affect the integrity of jury deliberations.

excuse: The permission a court grants to a person that he or she not have to serve as a juror. *See also* **group excuse** and **hardship excuse.**

exemption: The inability of a person to serve as a juror because of the nature of his or her job or other responsibilities. The Jury Selection and Service Act specifies three categories of mandatory exemptions, and a court may specify others in its jury plan.

exit questionnaire: A form that jurors fill out at the end of their service to give a court their perceptions of jury service and of the court's treatment of them.

Federal Judicial Center: A government agency that conducts research and educational projects aimed at improving the administration of justice.

Federal Rules of Civil Procedure: Rules that govern the procedure that the court and parties must follow in a civil case.

Federal Rules of Criminal Procedure: Rules that govern the procedure that the court and parties must follow in a criminal case.

felony: A crime of a more serious nature than a misdemeanor that is generally punishable by imprisonment for more than one year.

final oath: A vow, administered prior to trial by a judge or clerk, in which jurors swear, or affirm, that they will try a case fairly and render a true verdict.

fixed term: A term of jury service that requires a person to contact the court every day (either by automatic answering device or in person) for a specific period of time, such as one month or two weeks.

foreperson: A member of a grand or petit jury who speaks or answers for the jury.

grand jury: A group of individuals who meet in secret to determine whether there is probable cause to charge a person with a crime. *See also* **special grand jury.**

grand jury coordinator: A court employee whom the court designates to monitor grand jury use to promote effective utilization.

group excuse: A request, which a court must honor, by a member of a certain group or occupation (specified in a court's jury plan) that he or she not have to serve as a juror.

group method: A sequential method of challenging jurors in which the court examines persons seated as a group in the jury box and the parties do not know the characteristics of all potential jurors. Also called the *box method*.

hardship excuse: A request by a person that he or she not have to serve as a juror because service would result in "undue hardship" or "extreme inconvenience."

impanel: The process of examining, challenging, and accepting individuals from a jury panel to serve on the jury in a particular case.

indictment: A document issued by a grand jury that formally charges a person with a crime.

individual method: A sequential method of challenging jurors in which the court examines persons one at a time and parties exercise challenges without knowing the characteristics of all potential jurors.

interval number: *See* **quotient number.**

Judicial Conference of the United States: The principal policy-making body of the federal judiciary.

judicial council: A body composed of circuit court and district court judges that is responsible for effective administration of justice in the circuit.

judicial districts: Geographical regions into which Congress has divided the country for the purpose of administering justice.

juror attendance certificate: A document that a court can give to a juror who wants or needs proof of attendance.

juror fees: Money paid to jurors for their service.

juror information card: A form sent to summoned jurors to update information provided on the qualification questionnaire.

jury judge: A judge who has primary responsibility for supervising a court's jury selection system.

jury panel: The group of prospective jurors a court summons to appear on a certain day and from which it chooses juries for particular cases. Also called a *venire*.

jury plan: A written document, required by statute, that specifies how a court will select jurors.

Jury Selection and Service Act of 1968: The statute that governs jury selection and use in the federal courts.

jury staff: Federal court employees who are responsible for administering juries.

limiting term: A term of jury service that requires a person to contact the court on specified days or weeks within a larger period of time, such as one week a month for three months.

magistrate: A judicial officer of the district court who is subordinate to a judge and whose duties fall into four broad categories: conducting initial proceedings in criminal cases, trying misdemeanors, handling pretrial matters and other proceedings referred by judges, and trying civil cases with the parties' consent.

manual selection: Selecting names from the source lists, the master jury wheel, or the qualified jury wheel at random by hand.

master jury wheel: A randomly drawn list or computer file of names that a court uses in selecting jurors.

misdemeanor: A lesser crime than a felony that is generally punishable by a fine or imprisonment other than in a penitentiary.

multi-judge courthouse: A court at which more than one judge holds trial.

multiple voir dire: The process of selecting more than one jury at a time.

oath: *See* **final oath.**

on-call service: A type of jury service that requires a prospective juror to be available to serve at any time, but only requires him or her to report to the court as needed.

one trial/one day system: A term of jury service that requires a person to report to the court once. If selected for a jury, the person must serve in a trial; if not, his or her obligation is fulfilled.

peremptory challenge: A request by an attorney to exclude a person from serving as a juror in a case, for which the attorney need not give a reason.

petit jury: A group of individuals who determine a person's guilt or legal liability by listening to evidence that parties present at a trial and then meeting in secret and reaching a verdict.

pooling: A method of jury selection that requires judges to share the same group of prospective jurors, so that prospective jurors who are

not selected to serve in one trial return to a central location for possible selection in another trial.

prescreening questionnaire: A form a court sends to prospective jurors in high-publicity cases that elicits preliminary information to help screen out people or categories of people who are unlikely to be able to serve as jurors.

probable cause: The legal standard of evidence required to charge a person with a crime.

public draw: The requirement that a court must select names from its master jury wheel, its qualified jury wheel, and, in courts that use computers, its source lists, in public.

public inspection: The public's right, where designated by the Jury Selection and Service Act, the court, or a court's jury plan, to look at records that a court uses in its jury selection process.

public notice: The requirement that a court post written notices stating when it will draw names on a bulletin board (or the equivalent) at the court where the jurors it selects in the drawing will serve.

qualification questionnaire: A form that a court mails to people whose names are in its master jury wheel to elicit information that helps determine whether they are eligible to serve on a jury.

qualified jury wheel: A list or computer file of names of persons from which a court summons prospective jurors.

quotient number: The interval at which a court should select names from source lists when creating a master jury wheel. It is obtained by dividing the total number of names on the lists by the number of names to be selected. Also called an *interval number*.

random selection: A selection process in which no person in a group has a greater chance of being selected than any other person in the group.

remainder: A group of names on the source lists that are left over after the computation of the quotient number and for which a court

must develop a technique to ensure that they have a chance of being selected for the master wheel.

sequential method: A method of challenging jurors in which parties do not have full knowledge of the characteristics of all potential jurors. *See also* **group method** and **individual method.**

sequestration: A court's isolation of jurors from contact with the general public during the course of a trial, usually a sensational or high-publicity trial.

serve: The legal term for deliver.

settlement: An agreement by parties in a lawsuit to resolve their dispute without going to trial.

single-judge courthouse: A court at which only one judge holds trial.

single voir dire: The process of selecting one jury at a time.

source list: A list of names a court uses to create its master jury wheel. *See also* **voter list, driver's license list, and state jury selection list.**

special grand jury: A group of individuals who meet to study the overall pattern of criminal activity in a district. *See also* **grand jury.**

staggering: A method of jury selection in which judges select jurors at different times of the day so that challenged or unselected jurors from earlier jury selections can be used in subsequent trials.

starting number: The number at which a court should begin selecting names from the source lists when creating a master jury wheel.

state jury selection list: A list of persons used in the state jury selection process, which a federal court may use to create or supplement its master jury wheel if voter lists are not likely to yield jurors from a fair cross section of the community.

stipulation: An agreement by opposing parties regulating any matter incidental to a judicial proceeding or trial (e.g., an agreement to con-

tinue with a trial and be bound by a jury's verdict if a court must excuse a juror after the trial begins).

strike method: A method of challenging jurors in which parties do so with full knowledge of the characteristics of all potential jurors.

summons: A court order that directs a person to appear at the courthouse or be available for possible selection as a grand or petit juror.

term of service: The length of time a court requires a person to serve on a jury panel.

trial jury: *See* **petit jury.**

U.S. Attorney: An attorney in each judicial district who represents the federal government in criminal cases and in some civil cases. A U.S. Attorney is appointed by the President for a four-year term. Assistant U.S. Attorneys are lawyers on the U.S. Attorney's staff.

venire: *See* **jury panel.**

verdict: The decision of a jury.

voir dire: The process by which judges or lawyers or both question members of a jury panel to find out if there is any reason a person could not or would not serve without bias or prejudice in a particular case.

voter list: A list of persons registered to vote; the principal source of names most courts use to create a master jury wheel.

yield analysis: A method of determining how many qualification questionnaires or summonses a court should mail to obtain a specific number of jurors.

yield records: Data that jury staff compile to determine the number of jurors a mailing of qualification questionnaires is likely to yield.

U.S. GOVERNMENT PRINTING OFFICE: 1989-241-151/04803

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** provides educational programs and services for all third branch personnel. These include orientation seminars, regional workshops, on-site training for support personnel, and tuition support.

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The **Innovations and Systems Development Division** designs and tests new technologies, especially computer systems, that are useful for case management and court administration. The division also contributes to the training required for the successful implementation of technology in the courts.

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